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MANUAL

FOR

THE USE OF COUNTY OFFICERS IN SOUTH CAROLINA,

CONTAINING

The Rules of Practice in the State Courts, and in the United States' Courts for the District of South Carolina.

ALSO

THE STATUTES PRESCRIBING THE POWERS AND DUTIES OF THE VARIOUS COUNTY OFFICERS; TOGETHER WITH TABLES OF FORMS, REVISED AND ADAPTED TO USE UNDER THE NEW CONSTITUTION, AND METHODS OF PRACTICE.

COMPILED BY
HENRY G. JUDD, Clerk.

1872.

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Entered according to Act of Congress, in the year 1872, by H. G. Judd,
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COMPILER'S PREFACE.

The Compiler of the following pages has experienced, as he doubts not many other Clerks, and the different County officers throughout the State have also felt, the disadvantage under which we labor, in the performance of our various duties, as prescribed by laws both old and new, while we have nothing in the nature of a Digest, or Compend, or even an Abstract of official requirements, and must necessarily waste time in consulting bulky volumes of Statutes, to settle questions which continually arise, and must be met and disposed of, in the daily transactions of business.

Under the new Constitution, and the body of laws framed in consonance with its provisions, the Compilation of Miller, which has so long been deservedly regarded as indispensable, for at least Clerks and Sheriffs, became nearly useless; and it is to fill the void thus created, as well as to bring succinctly before each officer the group of Legislative enactments, that must control his action, that this new compilation has been made.

The Compiler prefers no claim to consideration on the ground of any special merit attaching to the work here presented; believing that equal or perhaps better service might have been rendered by others, had they been disposed to enter upon the undertaking It has been a task requiring rather the negative virtues of patience, method and plodding industry, than the positive and more active qualities that are supposed to be generally enlisted in book making, and therefore has been a labor better suited to the habits and tastes of him who presents it than something with greater pretensions could have been, and he will be abundantly satisfied if the volume may prove acceptable and of real value to those who shall hereafter perform the duties of County Officers in South Carolina.

To such, and to the gentlemen of the Bar, whose suggestions have contributed largely to its completeness, he begs leave to most cordially dedicate this Manual.

Beaufort S. C. 1872.

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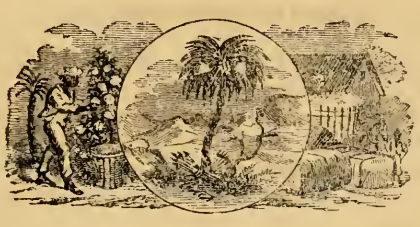
FOR THE

USE OF COUNTY OFFICERS IN SOUTH CAROLINA.



CHAPTER I.

OF THE STATE COURTS.

OF COURTS OF JUSTICE, AS ESTABLISHED UNDER THE CONSTITUTION OF 1868.

The Judicial power is vested in [1.] The Court for Trial of Impeachments; [2.] The Supreme Court; [3.] Two Circuit Courts, to wit: [1.] A Court of Common Pleas and; [2.] A Court of General Sessions: [4.] Probate Courts; [5.] Courts of Trial Justices; [6.] The Inferior Court of Charleston; [7.] Mayors' and Intendants' Courts.

THE SUPREME COURT.

THE SUPREME COURT consists of a Chief Justice, and two Associates, elected by the General Assembly, for six years. This Court has appellate jurisdiction only in cases of Chancery, and constitutes a court for the correction of errors at law. All books of record, files and property of the Court of Appeals, of Law and Equity, and of the Court of Errors, formerly in existance, have been transferred to the Supreme Court. Two sessions are annually held at Columbia, on the first Tuesday in April, and the fourth Tuesday in November. Salary of Chief Justice, $4,000. Associates, $3,500.

THE CIRCUIT COURTS.

CIRCUIT COURTS.—Composed of Court of Common Pleas, and Court of General Sessions. The State has been divided into eight Circuits, as follows:

FIRST CIRCUIT: The Counties of Charleston and Orangeburg.

SECOND CIRCUIT: The Counties of Aiken, Barnwell, Beaufort and Colleton.

THIRD CIRCUIT: The Counties of Sumter, Clarendon, Georgetown and Williamsburg.

FOURTH CIRCUIT: The Counties of Chesterfield, Marlboro', Darlington, Marion and Horry.

FIFTH CIRCUIT: The Counties of Kershaw, Richland, Edgefield and Lexington.

SIXTH CIRCUIT: The Counties of Chester, Lancaster, York and Fairfield.

Titles of the Courts.—The Supreme Court.—The Circuit Courts.
Counties composing the several Judicial Circuits.

SEVENTH CIRCUIT: The Counties of Newberry, Laurens, Union and Spartanburg.

EIGHTH CIRCUIT: The Counties of Greenville, Anderson, Oconee, Pickens and Abbeville.

TERMS OF CIRCUIT COURTS.

The Courts of the First Circuit are appointed to be held as follows:

1. The Court of General Sessions, at Charleston, for the County of Charleston, on the first Monday of January, May, June and November; and the Court of Common Pleas, at Charleston, on the second Monday of February, June and November.

2. The Court of General Sessions, at Orangeburg, for the County of Orangeburg, on the first Monday of January, May and October; and the Court of Common Pleas, at Orangeburg, on th first Wednesday after the first Monday of January, May and October.

The Courts of the Second Circuit are appointed to be held as follows:

1 The Court of General Sessions, at Aiken, for the County of Aiken, on the second Monday of January, May and September; and the Court of Common Pleas, at Aiken, on the first Wednesday after the second Monday of January, May and September.

2. The Court of General Sessions, at Blackville, for the County of Barnwell, on the third Monday in January, May and September; and the Court of Common Pleas, at Blackville, on the fourth Monday of January, May and September.

3. The Court General Sessions, at Beaufort, for the County of Beaufort, on the first Monday of February, June and October; and the Court of Common Pleas, at Beaufort, on the second Monday of February, June and October.

4. The Court of General Sessions, at Walterboro' for the County of Colleton, on the third Monday of February, June and October; and the Court of Common Pleas, at Walterboro', on the fourth Monday of February, June and October.

The Courts of the Third Circuit are appointed to held as follows:

1. The Court of General Sessions, at Sumter, for the County of Sumter, on the second Monday of January, May and October; and the Court of Common Pleas, at Sumter, on the first Wednesday after the second Monday of January May and October.

2, The Court of General Sessions, at Manning, for the County of Clarendon, on the fourth Monday of January, May and October; and the Court of Common Pleas, on the first Wednesday after the fourth Monday of January, May and October.

3. The Court of General Sessions, at Kingstree, for the County of Williamsburg, on the first Monday after the fourth Monday of January, May and October; and the Court of Common Pleas, at Kingstree, on the first Wednesday after the fourth Monday of January, May and October.

4. The Court of General Sessions, at Georgetown, for the County of Georgetown, on the second Monday after the fourth Monday of January, May and October; and the Court of Common Pleas, at Georgetown, on the first Wednesday after the second Monday after the fourth Monday of January, May and October.

Terms of the Courts of the State.

The Courts of the Fourth Circuit are appointed to be held as follows:

1. The Court of General Sessions, for the County of Chesterfield, on the first Monday of January, May and September; and the Court of Common Pleas, at Chesterfield, on the first Wednesday after the first Monday of January, May and October.

2. The Court of General Sessions, at Bennettsville, for the County of Marlboro', on the third Monday of January, May and September; and the Court of Common Pleas, at Bennettsville, on the first Wednesday after the first Monday of January, May and September.

3. The Court of General Sessions, at Darlington, for the County of Darlington, on the first Monday of February, June and October; and the Court of Common Pleas, at Darlington, on the first Wednesday after the first Monday of February, June and October.

4. The Court of General Sessions, at Marion, for the County of Marion, on the third Monday of February, June and October; and the Court of Common Pleas, at Marion, on the first Wednesday after the third Monday of February, June and October.

5. The Court of General Sessions, at Conwayboro', for the County of Horry, on the first Monday after the fourth Monday of March, July and November; and the Court of Common Pleas, at Conwayboro', on the first Wednesday after the first Monday after the fourth Monday of March, July and November.

The Courts of the Fifth Circuit are appointed to be held as follows:

1. The Court of General Sessions, at Camden, for the County of Kershaw, on the third Monday of January, April and September; and the Court of Common Pleas, at Camden, on the first Thursday after the third Monday of January April and September.

2. The Court of General Sessions, at Columbia, for the County of Richland, on the first Monday of February, May and October; and the Court of Common Pleas, at Columbia, on the second Monday of February, May and October.

3. The Court of General Sessions, at Lexington, for the County of Lexington, on the fourth Monday of February, May and October; and the Court of Common Pleas, at Lexington, on the first Wednesday after the fourth Monday of February, May and October.

4. The Court of General Sessions, at Edgefield, for the County of Edgefield, on the first Monday of March, June and November; and the Court of Common Pleas, at Edgefield, on the second Monday of March, June and November.

The Courts of the Sixth Circuit are appointed to be held as follows:

1. The Court of General Sessions, at Chesterville, for the County of Chester, on the first Monday of January, May and September; and the Court of Common Pleas, at Chesterville, on the first Wednesday after the first Monday of January, May and September.

2. The Court of General Sessions, at Lancaster, for the County of Lancaster, on the first Monday of February, June and October; and the Court of Common Pleas at Lancaster, on the first Wednesday after the first Monday of February, June and October.

Terms of the Courts of the State.

1. The Court of General Sessions, at Yorkville, for the County of York, on the first Monday of March, July and November; and the Court of Common Pleas, at Yorkville, on the first Wednesday after the first Monday of March, July and November.

4. The Court of General Sessions, at Winnsboro', for the County of Fairfield, on the first Monday of April, August and December; and the Court of Common Pleas, at Winnsboro', on the first Wednesday after the first Monday of April, August and December.

The Courts of the Seventh Circuit are appointed to be held as follows:

1. The Court of General Sessions, at Newberry, for the County of Newberry, on the third Monday of January, May and September; and the Court of Common Pleas, at Newberry, on the first Wednesday after the third Monday of January, May and September.

2. The Court of General Sessions, at Laurensville, for the County of Laurens, on the third Monday of February, June and October; and the Court of Common Pleas, at Laurensville, on the first Wednesday after the third Monday of February, June and October.

3. The Court of General Sessions, at Unionville, for the County of Union, on the third Monday of March, July and November; and the Court of Common Pleas at Union, on the first Wednesday after the third Monday of March, July and November.

4. The Court of General Sessions, at Spartanburg, for the County of Spartanburg, on the first Monday after the fourth Monday of March, July and November; and the Court of Common Pleas, at Spartanburg, on the second Monday after the fourth Monday of March, July and November.

The Courts of the Eighth Circuit are appointed to be held as follows:

1. The Court of General Sessions, at Greenville, for the County of Greenville, on the first Monday in January, May and September; and the Court of Common Pleas, at Greenville, on the first Wednesday after the first Monday in January, May and September.

2. The Court of General Sessions, at Anderson, for the County of Anderson, on the fourth Monday of January, May and September; and the Court of Common Pleas, at Anderson, on the first Wednesday after the fourth Monday of January, May and September.

3. The Court of General Sessions, at Walhalla, for the County of Oconee, on the second Monday of March, July and November; and the Court of Common Pleas at Walhalla, on the first Wednesday after the second Monday of March, July and November.

4. The Court of General Sessions, at New Pickens, for the County of Pickens, on the fourth Monday of March, July and November; and the Court of Common Pleas, at New Pickens, on the first Wednesday after the fourth Monday of March, July and November.

5. The Court of General Sessions, at Abbeville, for the County of Abbeville, on the third Monday of February, June and October; and the Court of Common Pleas at Abbeville, on the first Wednesday after the third Monday of February, June and October.

TERM OF OFFICE OF CIRCUIT JUDGES.

The Circuit Judges are elected by the General Assembly, for the term of four years, and receive an annual Salary of Three thousand five hundred dollars.

Judges interchange Circuits, upon the order of the Chief Justice, whenever in his judgment, it is deemed advisable; and have power to hold special Terms within their respective Circuits, at any time, at their discretion.

PROBATE COURTS.

COURTS OF PROBATE have been established in each County of the State, which hold their sessions on the first Monday of each month, at the Court House, and at such other times and places as shall be judged most convenient for all persons interested. They are Courts of Record, having a seal, and every Judge of Probate has jurisdiction in all matters testamentary, and of administration; in business appertainining to minors, and in the allotment of dower; cases of idiocy, and persons *non compos mentis*; also, in relation to the appointment and removal of guardians of minors, insane and idiotic persons, and in relation to the duties imposed by law on such guardians, in the management and the disposition of the estates of their wards. They also exercise original jurisdiction in relation to trustees appointed by will, in cases prescribed by law; and have jurisdiction of petitions for partition of real estate, when there is no dispute in relation to the title thereof. The Circuit Court has appellate jurisdiction in all matters originally within the jurisdiction of the Probate Court, and the Supreme Court of all questions of law arising in the course of the proceedings of the Circuit Court, in probate matters. All files, records and property formerly held by Courts of Ordinary, are now under the control of the Probate Courts of the respective Counties. Judges of Probate are elected, by popular vote, and hold office for two years.

COURTS OF TRIAL JUSTICES.

COURTS OF TRIAL JUSTICES, have limited civil jurisdiction; and in cases of bastardy, and offences punishable by fines not exceeding one hundred dollars, and imprisonment not exceeding one month; they may also commit or bind over persons charged with crimes beyond their jurisdiction, for trial before the Court of General Sessions. Trial Justices are appointed, and are removable by the Governor.

THE INFERIOR CRIMINAL COURT.

THE INFERIOR CRIMINAL COURT, for *criminal* trials only, was established by Act of Assembly, in March, 1872; is confined in its jurisdiction to the County of Charleston, has appellate jurisdiction in Trial Justice, and limited concurrent jurisdiction in General Sessions cases, and holds four sessions annually, to wit: on the first Monday in January, April, July and October. The Judge is elected by a joint ballot in General Assembly, and holds his office during two years, at an annual salary of Two thousand five hundred dollars.

RULES OF PRACTICE

IN THE

CIRCUIT COURTS OF THE STATE OF SOUTH CAROLINA.

ADOPTED DECEMBER 16th, 1870.

CLERK.

RULE I.

STATUTES AND RULES.

Every Clerk of the Circuit Court who cannot produce the Statutes at Large, and the Rules of Court, when required, shall be fined ten dollars for each default.

RULE II.

CLERK TO KEEP BOOKS.

The several Clerks of the Circuit Court shall keep in their respective offices, in addition to the judgment book required to be kept by Section 303, of the Code of Procedure, a book, properly indexed, in which shall be entered the titles of all civil actions and special proceedings, with proper entries under each, denoting the papers filed, the orders made, and the steps taken therein, with the dates of the several proceedings; also, an index of all undertakings filed in the office, stating in appropriate columns, the title of the cause, or proceeding in which it is given, (with a general statement of its condition) or a reference to the Statute under which it is given, the date, when and before whom approved, and when filed, with a statement of disposition or order made of, or concerning it; and such other books, properly indexed, as may be necessary to enter the Minutes of the Court, docket judgments, enter orders and all necessary matters and proceedings; and such additional books as the respective Circuit Courts may direct.

SHERIFF.

RULE III.

SHERIFF TO FILE AFFIDAVITS ON ARREST.

The Sheriff shall file with the Clerk, the affidavits on which an arrest is made, within five days after the arrest.

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1. Clerk failing to produce Statutes and Rules, to be fined.
2. Books to be kept by the Clerk,—Judgment book,—File book,—Index to undertakings, Minutes of the Court.—Order books, &c.
3. Affidavit of arrest,—When to be filed.

RULE IV.

SHERIFF COMPELLED TO RETURN PROCESS.

At any time after the day when it is the duty of the Sheriff, or other officer, to return, or deliver or file any process, undertaking, or order, or other paper, by the provisions of the Code of Proceedure, any party entitled to have such act done, may serve on the officer a notice to return, deliver or file such process, undertaking, order, or other paper, as the case may be, within ten days; or show cause, at a time to be designated in said notice, why an attachment should not issue against him.

GUARDIAN AD LITEM.

RULE V.

APPOINTMENT OF GUARDIAN AD LITEM.

No person, other than the general Guardian of an infant, shall be appointed as Guardian AD LITEM, either on the application of the infant or otherwise, who is not fully competent to understand and protect the rights of the infant; who has any interest adverse to that of the infant: who is connected in business with the attorney or counsel of the adverse party; who is not of sufficient ability to answer to the infant for any damage which may be sustained by his negligence or misconduct in the defence or prosecution of the suit. This Rule shall not apply to actions "for the recovery of money only," or for the recovery, exclusively, of real or personal property, as specified in Section 276 of the Code.

RULE VI.

DUTY OF GUARDIAN AD LITEM.

It shall be the duty of every attorney or other officer of this Court to act as the guardian of any infant defendant, in any suit or proceeding, whenever appointed for that purpose by an order of the Court. And it shall be the duty of the guardian to examine into the circumstances of the case, so far as to enable him to make the proper defence for the protection of the rights of the infant: and he shall be entitled to such compensation for his services as the Court may deem reasonable.

ATTORNEYS.

RULE VII.

ADMISSION OF ATTORNEYS.

Applicants for admission to practice as Attorneys and Counsellors in the Circuit Courts, who are entitled to examination, shall be examined in open Court, at a regular term thereof; and no private examination shall be permitted

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4. Sheriff to return process.—Within ten days.
5. Appointment of Guardians *ad litem*.
6. Duty of Guardians *ad litem*.—Their compensation.
7. Admission of Attorneys to practice in the Circuit Courts.

RULE VIII.

CHANGE OF ATTORNEY.

An Attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon the application of the client, by order of the Circuit Judge, and not otherwise.

RULE IX.

DRESS.

The habit of the bar, and of the officers of the Court, shall be black coats: and no gentleman of the bar shall be heard unless so habited.

RULE X.

ATTORNEYS AND OTHER OFFICERS NOT TO BE SURETIES.

No Attorney, or other officer of Court, shall become surety upon any recognizance in the Court of General Sessions, or upon any undertaking in the Court of Common Pleas, except for payment of costs in the case of a non-resident.

RULE XI.

NO ARGUMENT AFTER DECCSION.

Counsel shall not attempt to argue or explain a case, or any matter arising therein after he has been heard, and the opinion of the Court has been pronounced.

RULE XII.

MANNER OF PREPARING PAPERS.

All pleadings and other proceedings shall be written on each page of legal cap paper (with a margin of one and a half inch on the left). If more than two pages are used, they shall be fastened at the top so as to be read continously. Papers shall be folded from the bottom, in four equal folds, and endorsed with the style of the Court, the names of the parties, the nature of the paper, and the name of the attorney.

RULE XIII.

FOLIOS TO BE MARKED AND TITLE OF CAUSE TO BE ENDORSED.—PLEADINGS TO BE LEGIBLY WRITTEN.—OBJECTIONS ,WHEN WAIVED.

The attorney, or other officer of the Court, who draws any pleadings, deposition affidavit, case, exceptions, report, or other paper, or enters any judgment, exceeding two folios in length, shall distinctly number and mark each folio of one hundred words in the margin thereof; and all copies, either for the party, or the Court shall be numbered or marked in the margin, so as to conform ta the original draft, or entry, and to each other, and shall be endorsed with the title of the cause; and all proceedings, and copies thereof, shall be fairly and legibly written:

8. Change of Attorney.
9. Dress of Attorneys and officers of Court
10. Officers not to be sureties
11. No argument heard after decision.
12. Papers, how they must be prepared, folded and endorsed.
14. Cause must have title endorsed.—Folios must be numbered.

and if not so written, folioed, and endorsed, the Clerk shall not file the same, nor will the Court hear any motion or application founded thereon. Objections for failure to comply with this Rule shall be deemed waived, unless the party upon whom the paper is served shall, within twenty-four hours after receipt, return it to the party serving the same, with a statement of the grounds of objection,

RULE XIV.

CONSENT MUST BE IN WRITING.

No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or by his attorney or counsel.

RULE XV.

ATTORNEY TO ENDORSE NAME AND RESIDENCE ON PAPERS SERVED

On process or papers to be served, the attorney, besides subscribing or endorsing his name, shall add thereto his place of business; and if he neglect to do so, papers may be served on him at his place of residence, through the mail, by directing them according to the best information which can conveniently be obtained, concerning his place of residence. This rule shall also apply to a party who prosecutes or defends in person.

RULE XVI.

ORDERS BY DEFAULT TAKEN BY COUNSEL.

When any order is obtained by default, the counsel obtaining the same shall endorse his name as counsel, on the paper containing the proof of the notice; and the Clerk, in entering the order, shall specify the name of such counsel.

COMMENCEMENT OF ACTION.

RULE XVII.

AFFIDAVIT OF SERVING SUMMONS.

Where the service of the summons, and of the complaint or notice accompanying the same, if any, shall be made by any person other than the Sheriff, it shall be necessary for such person to state in his affidavit of service, when and at what particular place he served the same, and that he knew the person served to be the person mentioned and described in the summons as defendant therein; and also, to state that he left with the defendant a copy of the papers so served.

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13. Pleadings to be legibly written. Objections, when waived.
14. Consent to be binding must be in writing.
15. Attorney shall endorse his name and place of business on papers to be served.
16. Orders by default. 17. Affidavit of service, how & when served.

RULE XVIII.

WHAT TO BE DEEMED AN APPEARANCE.

Service of notice of an appearance or retainer generally, by an attorney for the defendant, shall in all cases, be deemed an appearance; and the plaintiff, on filing such notice, at any time thereafter, with proof of service thereof, may have the appearance of the defendant entered as of the time when such notice was served.

PLEADINGS.

RULE XIX.

NUMBERING CAUSES OF ACTION, OR GROUNDS OF DEFENCE.

In all cases of more than one distinct cause of action, defence, counter claim, or reply, each shall be separately stated and numbered.

RULE XX.

TIME TO ANSWER NOT EXTENED WITHOUT AFFIDAVIT OF MERITS. SUBSEQUENT EXTENSION.

No order extending the time to answer or demur to a complaint shall be granted, unless the party applying for such order shall present to the Judge to whom the application shall be made, an affidavit of merits; or an affidavit of the attorney or counsel retained to defend the action that, from the statement of the case in the action made to him by the defendant, he verily believes that the defendant has a good and substantial defence upon the merits, to the cause of action set forth in the complaint or some part thereof. And if any extension of time to answer, or demur has been granted, by stipulation or order, the fact shall be stated in the affidavit.

RULE XXI.

MOTIONS TO AMEND PLEADINGS.

Motions to strike out of any pleading, matter alleged to be irrelevant or redundant, and motions to correct a pleading on the ground of its being "so indefinite or uncertain, that the precise nature of the charge or defence is not apparent", must be noticed before demurring or answering the pleading; and within twenty days from the service thereof.

RULE XXII.

DEFENCE OF PLENE ADMINISTRAVIT.

The defence of *plene administravit* shall not be effectual, unless the party making such defence shall file with the pleadings, on oath, a full and particular account of the administration of the estate, with a certified copy of the inventory and appraisement; or, if the party be charged as executor of his own wrong, a full

18. What deemed an appearance.
19. Cause of action or grounds of defence to be numbered.
20. Time to answer—when granted.
21. Motion to amend pleadings.
22. Defence of *plene administravit*.

statement, on oath, of all the assets which have come into his possession, and the value thereof, and an account showing the manner in which the same may have been disposed of.

RULE XXIII.

REAL OWNER ADMITTED TO DEFEND ACTION AGAINST TENANT.

Where a tenant is sued for land of which he has possession, the real owner may on motion, be admitted as a defendant to the action, and shall be entitled to the serviceof a copy of the complaint, and to answer or demur thereto, as if he had been the original defendant,

JURORS.

RULE XXIV.

VENIRE AND SUMMONS FOR JURORS.

To all writs of *venire* for jurors, the Sheriff and his deputies shall make a return, on oath, before the Clerk of the Court from which the *venire* issues, including in one class the names of those who have been summoned personally; in the second class, of those for whom summonses have been left at their houses; and in the third class, of those who could not be found. The summons for each juror shall state the day, the hour, and the Court at which he is to appear, the penalty for default, and also whether he is to serve as a grand or petit juror.

RULE XXV

DEFAULTING JURORS.

If any juror in attendance upon the Court, shall refuse or neglect to attend punctually, and to answer to his name whenever the same shall be called, the Clerk shall note such default, and the defaulter shall forthwith be served with a rule to show cause why he should not be fined therefor.

Upon the adjournment of each term of the Court, the Clerk shall cause to be served by the Sheriff, on each and every juror noted for non-attendance at that Court, a notice requiring him to show cause, by affidavit, at ten o'clock on the first day of the next regular term, why he should not be fined, according to law, for failing to attend and serve as a grand or petit juror, as the case may be. And on or before the first day of the next regular term, the Sheriff shall make return of all such notices to the Clerk, who shall enter the same on the Contingent Docket, deliver them to the Attorney General or Solicitor; and the Attorney General or Solicitor shall, upon the call of the docket move for the judgment of the Court thereon.

RULE XXVI.

JURY IN FELONY.

In the empannelling of a jury in cases of felony, where the right of peremptory

23. Owner may defend suit against tenant.
24. Venire for Jurors.
25. Defaulting jurors to be ruled to show cause.
26. Clerk to issue *scire facias*.

challenge is claimed and allowed, a child under ten years of age shall, in the presence of the Court, draw one from the names of all the jurors in attendance, which one having answered, shall be presented to the accused ; and so on, until in regular course the panel be exhausted, or a jury formed.

CALENDAR.

RULE XXVII.

COMMON PLEAS CALENDAR.

The Clerk, in preparing the Calendar for the Court of Common Pleas shall arrange the cases in five clases, as follows : In the first class, he shall include all issues of fact, to be tried by a jury, except those arising on appeal from inferior Courts ; in the second class, issues of fact to be tried by the Court ; in the third class issues of law; in fourth class, all other calendar motions ; in the fifth class, appeals from inferior Courts. The respective clases shall be arranged each in a separate book, to be prepared for the purpose, to be lettered on the back "Calendar," and numbered 1, 2, 3, 4, and 5, respectively, in accordance with the foregoing classification.

Where an issue has been settled by an order of the Court, the Clerk shall give it place on the calendar according to the date of the order.

The Clerk shall preserve the Calendar as a record of the Court. He shall not only number the causes thereon, but shall indicate the number of terms they may have been at issue ; and he shall also, in a separate column copy the memoranda of the disposition of the case at the previous term.

During the daily sessions of the Court, the Calendar shall not be subject to the inspection of the bar, but it shall be the duty of the Clerk to make a copy thereof, for the use of the bar.

Notes of issue, in addition to the matter required to be set forth by Section 278 of the Code, shall also designate, by number, the class to which the issue belongs.

TRIAL.

RULE XXVIII.

MOTIONS FOR CONTINUANCE.

Upon calling the Calendar, no motion for the postponement of trial beyond the term shall be granted on account of the absence of a witness, without the oath of the party, his counsel or agent, to the following effect, to wit : that the testimony of the witness is material to support the action or defence of the party moving; that the motion is not intended for delay, but made solely because he cannot go safely to trial without such testimony ; that he has made use of due diligence to procure the testimony of the witness ; or such other circumstances as will satisfy

26. Empannelling of Juries.
27. Arrangement of Calendars.—Numbers 1, 2, 3, 4, and 5.
Issues made.—Clerk to preserve Calendar;—to make a copy for the Bar.
Notes of issue to designate the number of Calendar.
28. Motions for continuance.—Requisites.

the Court that his motion is not intended merely for delay. In all such cases, where a writ of subpœna has been issued the original shall be produced, with the proof of service, or the reason why not served, endorsed thereon, or attached thereto; or if lost, the same proof shall be offered, with additional proof of the loss of the original subpœna. After the first term, a party applying for such postponement on account of the absence of a witness, shall set forth, in addition to the foregoing matters, what he believes the witness, if present, would prove.

RULE XXIX.

ISSUES, HOW SETTLED.—MOTION FOR NEW TRIAL.

In cases where the trial of issues of fact is not provided for in Section 276 of the Code, if either party shall desire trial by a jury, such party shall, within ten days after issue joined, give notice of a special motion to be made upon the pleadings, that the whole issue, or any specific questions of fact involved therein, be tried by a jury. With the notice of motion shall be served a copy of the questions of fact proposed to be submitted to the jury for trial, and in proper form, to be incorporated in the order; and the Court or Judge may settle the issues, or may refer it to a referee to settle the issues. Such issues must be settled in the form prescribed in Section 95, of the Code of Proceedure.

When any specific question of fact involved in an action, or any question of fact not put in issue, is ordered to be tried by a jury as a substitute for a feigned issue, and has been tried, or a reference other than of the whole issue has been ordered, under Section 295 of the Code, and a trial had, if either party shall desire to apply for a new trial, on the ground of any error of the Judge or referee, or on the ground that the verdict or report is against evidence, (except when the Judge directs such motion to be made upon his minutes, at the same term or court at which the issues are tried,) a case or exceptions, or a case containing exceptions, shall be made, which shall be served and settled in the manner prescribed by the Rules of the Court for the settlement of cases and exceptions. If no motion be made for a new trial in such case, the parties shall be deemed to have acquiesced in the decision of the Judge or referee, and the verdict of the jury or report of the referee; and the same shall not be questioned upon the final hearing of the cause, or in any subsequent proceeding therein.

RULE XXX.

CALLING PLAINTIFF.—SUBMITTING TO NONSUIT.

It shall not be necessary to call the plaintiff when the jury return to the bar to deliver their verdict, and the plaintiff shall have no right to submit to a nonsuit after the jury have gone from the bar to consider of their verdict.

RULE XXXI.

SUBMITTING TO NONSUIT OR DISMISSAL BEFORE REFEREES.—FORM OF REFEREE'S REPORT.—PROCEEDINGS ON REFERENCES OTHER THAN THE ISSUES.

On a hearing before referees, the plaintiff may submit to a nonsuit or dismissal of his complaint, or may be nonsuited, or his complaint be dismissed, in like manner

28. Original subpœna must be produced.
29. Manner of settling issues.—Exceptions.—Motion for a new trial.
30. Calling the plaintiff.—Submission to nonsuit.

as upon trial, at any time before the cause has been finally submitted to the referees for their decision; in which case the referees shall report according to the fact, and judgment may thereupon be perfected by the defendant.

Upon a trial by referees, they shall, in their decision and final report, state the facts found by them, and their conclusions of law separately—a copy of which shall be served with notice of the judgment; and the time within which exceptions may be taken to the report, shall be computed from the time of such service.

In references, other than for the trial of the issues in an action, upon the coming in of the report of the referee, the same shall be filed, and a note of the day of the filing shall be entered by the Clerk in the proper book, under the cause or proceeding; and the said report shall become absolute and stand as in all things confirmed unless exceptions thereto are filed and served within ten days after service of notice of the filing of the same. If exceptions are filed and served within such time, the same may be brought to a hearing on the notice of any party interested therein.

RULE XXXII.

EXAMINATION OF WITNESSES, HOW CONDUCTED.—TIME FOR SUMMING UP, OR HEARING.

On the trial of issues of fact, one counsel only, on each side, shall examine or cross-examine a witness, and not more than two counsel on each side shall sum up or be heard in any cause; and during such examination, the examining counsel shall stand; and the testimony, if taken down in writing, shall be written by some other person than the examining counsel: but the Judge who holds the Court may otherwise order, or may dispense with this requirement.

RULE XXXIII.

CALENDAR MOTIONS, HOW NOTICED,—PAPERS TO BE FURNISHED, AND BY WHOM.

Calendar motions shall be noticed for the first day of the term, by either party. The papers to be furnished on such motions shall be a copy of the pleadings, when the question arises on the pleadings, or any part thereof, or of such parts only as relate to the question raised by the demurrer, a copy of the special verdict, return, or other papers on which the question arises. The party whose duty it is to furnish papers, shall serve a copy on the opposite party (except upon trial of issues of law) at least four days before the time when the matter may be noticed for argument. If the party whose duty it is to furnish the papers, shall neglect to do so, the opposite party shall be entitled to move, on the affidavit and notice of motion, that the cause be struck from the Calendar, (whichever party may have noticed it for argument,) and that judgment be rendered in his favor; Provided, however, that in cases of mortgage and partition, where the plaintiff's rights are not contested, no copies of pleadings need be furnished to the Court.

The papers shall be furnished by the plaintiff, when the question arises on special verdict, and by the party demurring, in cases of demurrer; and in all other cases by the party making the motion.

31. Nonsuit or dismissal before referees.—Proceedings on references other than the issues.

32. Number of counsel to be heard in a case.

33. Calendar motions, how noticed.—By whom papers to be furnished.—By party moving

RULE XXXIV.

ORDER TO STAY WITH VIEW TO CHANGE VENUE.—REVOKING STAY.—NOTICE OF REVOCATION.

No order to stay proceedings, for the purpose of moving to change the place of trial, shall be granted, unless it shall appear from the papers that the party moving has used due diligence in preparing the motion for the earliest practicable day after issue joined. Such order shall not stay the plaintiff from taking any steps, except subpœnaing witnesses for the trial, without a special clause to that effect.

RULE XXXV.

COMMISSIONS TO TAKE TESTIMONY.

Commissions when executed, shall be sealed up by the Commissioners who shall have executed the same, and directed to the Clerk of the Court from which they were issued. Upon the envelope shall appear the names of the commissioners written by themselves across the seals, the title of the cause, and, when sent by mail, the proper post mark. Commissions shall not be opened but upon motion in open Court, or before a referee or referees hearing the cause, or by consent of the parties in writing; or by the Clerk or Referee, upon request of any of the parties, and eight days' notice to all parties of the time and place of such opening.

RULE XXXVI.

PRESENCE OF THE ACCUSED ON TRIAL,

No person shall be tried on an indictment unless personally present, except for misdemeanors.

RULE XXXVII.

SURVEYS, HOW MADE WHEN ORDERED BY THE COURT.

Surveys of lands in any quantity of two hundred acres or less, shall be laid down by a scale of ten chains to the inch; all over that quantity by a scale of twenty chains to the inch.

No survey made under an order of Court, shall be received in evidence, unless it appear that at least ten days' notice of the time and place of commencing such survey has been given to the parties.

Every surveyor shall represent in his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership. He shall also represent a fence, buildings, or the like, by a mark in due proportion in size, according to the scale of the plat. He shall, by some small but distinct letter or figure, distinguish every corner, station, blazed tree, or other point which is likely to be the subject of dispute. He shall take care not to render the plat confused or indistinct by crowding too much upon it; but he shall rather refer by letters or figures to a table, (which may contain the courses and distances of lines, the marks at corners, stations and noted points, explanations and remarks,) than attempt to write much on the lines, or near to the points on the plat.

34. Order to stay to change venue.—Revoking stay.—Notice of revocation.
35. Commissions to take testimony.
36. Presence of accused on trial.
37. Survey ordered by Court, how conducted.—What plat must represent.

He shall also make two drafts or duplicates of the plat, so that on the trial there may be one for the use of the Judge, and the other for the parties in Court.

After a cause has gone to a jury, and evidence has been heard on it, neither party shall be allowed to make any objection to the order of survey, or the manner in which it may have been obtained, or the survey executed,

A copy of this rule shall be appended to every order of survey served on a surveyor.

JUDGMENT AND EXECUTION.

RULE XXXVIII.

JUDGMENT ON FAILURE TO ANSWER.—WHERE TO BE APPLIED FOR.

When the plaintiff in the action is entitled to judgment upon the failure of the defendant to answer the complaint, and the relief demanded requires application to be made to the Court, such application must be made to the Circuit Court in the County in which the action is triable.

RULE XXXIX.

JUDGMENT AFTER SERVICE BY PUBLICATION,

In actions for the recovery of money only, when the summons has been served by publication under Section 158 of the Code, and the defendant is a non-resident of the State, no judgment shall be entered unless the plaintiff at the time of making the application for judgment, shall show, by affidavit, that an attachment has been issued in the action, and levied on the property, belonging to the defendant; which affidavit shall contain a specific description of such property and a statement of its value, and shall be attached to, and filed with, the affidavit of publication; nor, unless the plaintiff shall, at the same time, produce and file with the Clerk an undertaking, with two sureties to be approved by the Court, or the Clerk thereof, that the plaintiff will abide the order of the Court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restituion of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defence.

RULE XL.

RECORDING JUDGMENTS.

The Clerk shall record in the Judgment Book, at length, all judgments entered in his office, with the names of all parties, plaintiff or defendant, who have appeared or been served with a summons therein, and the names of the attorneys, with the time and place of the rendition of such judgment; and when, by any judgment, any matter shall be adjudged, or act or thing commanded, other than the payment of money, space sufficient shall be left after the entry thereof for the entering of such proceedings as may be thereafter had for the enforcement or satisfaction of such judgment.

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37. Duplicate plats.—After cause has been heard, neither party to object to rule of survey.
38. Judgment on failure to answer.
39. Judgment after service by publication.—Undertaking to be filed.
40. Recording Judgments.

When any judgment shall require the payment of money, either as damages or costs, it shall be noted in an Abstract of Judgments, which abstract shall be in tabular form, and contain, in separate columns, the following matters: First, the names of all parties bound to discharge such payment; Second, the names of the parties having the right to enforce such payment; Third, the date of the judgment; Fourth, the amount adjudged to be paid; Fifth, the costs; Sixth, the aggregate of the amount and costs; Seventh, the issuing of execution, with the date thereof; Eighth, the return to such execution.

RULE XLI

RECORDING JUDGMENTS OF THE SUPREME COURT.—ADJUSTING COSTS THEREON.

When a judgment rendered by the Supreme Court, shall be certified to the Circuit Court, it shall be the duty of the Clerk of the Circuit Court to adjust the costs and disbursements in the Supreme Court to which any party may be entitled, upon due notice, as provided in the case of the adjustment of costs in the Circuit Court; and he shall record such judgment and enter an abstract thereof in like manner as is provided in the case of judgment rendered by the Circuit Court. At the foot of such record a reference shall be made to the page at which the judgment appealed from is recorded, and a like reference shall be entered at the foot of the entry of the original judgment, to the page at which the judgment on appeal is recorded.

RULE XLII.

SALES OF LAND AT AUCTION.

When lands are directed to be sold at auction, notice of the sale shall be given for the same time, and in the same manner, as is required by law on sales of real estate by Sheriffs on execution.

RULE XLIII.

JUDICIAL SALES, WHERE TO BE MADE.

All sales of real estate by the Sheriff, or by order of the Court, shall be made at the Court House of the County in which such real estate may be situated, but sales of personal property by the Sheriff or by the order of the Court may be made at places other than the Court House: Provided, that the place shall always be mentioned in the advertisement thereof.

RULE XLIV.

ADDITIONAL ALLOWANCES.

Applications for an additional allowance under the provisions of Sec. 334 of the Code of Procedure, can only be made to the Court before which the trial is had, or the judgment rendered.

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40. Clerk to keep Abstract of Judgments; What abstract shall contain.
41. Adjustment of costs in cases from Supreme Court.— Judgments of Supreme Court to be recorded, and indexed, with cross references.
42. Auction sales of lands by Sheriffs.
43. Judicial sales of real estate; Where made.
44. Additional allowances.

SALE OF INFANTS REAL ESTATE.

RULE XLV.

APPLICATION TO APPOINT SPECIAL GUARDIAN.

An infant, by his special guardian if he has any, and if there is none by his next friend, may present a petition, stating the age and residence of the infant, the situation and value of his real and personal estate, the situation, value and annual income of the real estate proposed to be sold, and the particular reasons which render a sale of the premises necessary or proper, and praying that a guardian may be appointed to sell the same. The petition shall also state the name and residence of the person proposed as such guardian, the relationship, if any, which he bears to the infant, and the security proposed to be given; and the petition shall be accompanied by affidavits of disinterested persons, or other proof, verifying the material facts and circumstances alleged in the petition. And if the infant is of the age of fourteen, he shall join in the application.

RULE XLVI.

ORDER TO APPOINT GUARDIAN.—PROCEEDINGS ON SUCH ORDER.

If it satisfactorily appears that there is reasonable ground for application, an order may be entered, appointing a guardian for the purposes of the application, on his executing and filing with the Clerk the requisite security, approved as to its form and manner of execution by a Judge of this Court, signified by his approbation endorsed thereon; and the order shall direct a reference to ascertain the truth of the facts stated in the petition; whether a sale of the premises, or any and what part thereof, would be beneficial to the infant, and the particular reasons therefor; the value of the property proposed to be sold, and of each separate lot or parcel thereof; the terms and conditions upon which it should be sold; whether the infant is in absolute need of any, and what part of the proceeds of the sale for his support and maintenance, over and above the income of this and his other property, and what he might earn by his own exertions; and if there is any person entitled to dower in the premises, who is willing to join in the sale, also to ascertain the value of such dower. But no proceedings shall be had upon such reference until the guardian produces a certificate of the Clerk that the requisite security has been duly proved, or acknowledged, and filed agreeably to the order of the Court, and which certificate shall contain the name of the officer by whom it was approved, and shall be annexed to the report.

The said report shall contain in itself a statement of the particular reasons which, in the opinion of the referee, render a sale of the premises necessary or proper, and of all the facts required to be ascertained and reported, and shall not refer to the petition or affidavit, for such statements.

RULE XLVII.

SECURITY OF SPECIAL GUARDIAN.

The security required on a sale of the real estate of an infant, shall be a bond of the guardian, with two sufficient sureties in a penalty of double the value of the

45. Application by infant for appointment of special guardian.
46. Order on petition to appoint special guardian.—Proceedings under such order.—Guardian shall produce certificate of filing security.—Report of referee.
47. Security to be given by guardian.

premises, including the interest on such value during the minority of the infant each of which sureties shall be worth the penalty of the bond over and above all debts; or a similar bond of the guardian only, secured by a mortgage on unencumbered real estate, of the value of the penalty of such bond.

RULE XLVIII.

PROCEEDS TO BE BROUGHT INTO COURT.

If the proceeds of the sale of an infant's estate exceed five hundred dollars, and the guardian has not given security by mortgage upon real estate, he shall bring the proceeds into Court, or invest the same under the direction of the Court for the use of the infant; and, unless by order of the Court, the guardian shall only be entitled to receive so much of the interest or income thereof, from time to time, as may be necessary for the support and maintenance of the infant. If the infant's interest in the property does not exceed one thousand dollars, the whole costs, including disbursements, shall not exceed twenty dollars; and when several infants are interested in the same premises, as tenants in common, the application in behalf of all shall be made in the same petition, although they may have several general guardians; and there shall be but one reference to ascertain the propriety of a sale as to all, and but one bill of costs shall be allowed.

RULE XLIX.

WHEN MONEY MAY BE PAID TO GENERAL GUARDIAN.—ORDERS TO PAY MONEY.

No moneys arising from the sale of the real estate of an infant, on a mortgage or partition sale, or under any judgment or order of the Court, shall be paid over to his general guardian, except so much thereof, or of the interest or income from time to time, as may be necessary for his support and maintenance; unless such guardian has previously given sufficient security on unencumbered real estate, to account to the infant for the same in the usual form.

No order shall be made for the payment of any such moneys to any person claiming the same, except on petition, accompanied by a certified copy of the order in pursuance of which the money was brought into Court, together with a statement of the depository of the money, showing the present state and amount of the funds, separating the principal and interest, and showing the amount of each; and the Court may take such proof of the truth of the matters stated in the petition as shall be deemed proper, or may refer the same to a suitable referee, to take proof and report thereon.

RULE L.

GUARDIAN NOT TO RECEIVE PROPERTY UNLESS SECURITY HAS BEEN GIVEN.

No guardian *ad litem* for an infant party, unless he has given security to the infant according to law, shall, as such guardian, receive any money or property belonging to such infant, or which may be awarded to him in the suit, except such costs and expenses as may be allowed by the Court to the guardian out of the funds, or recovered by the infant in the suit. Neither shall the general guardian of an infant receive any part of the proceeds of a sale of real property belonging to

48. Proceeds of the sales how disposed of.—Bill of costs not to exceed fixed sum.
49. Money derived from sales not to be paid over to guardian, except under limitations.
50. Guardian *ad litem* not to receive property until he has given security.

such infant, sold under a judgment or order of the Court, until the guardian has given such further security for the faithful discharge of his trust as the Court may direct.

DISCOVERY OF BOOKS AND PAPERS.

RULE LI.

APPLICATION FOR DISCOVERY.—HOW MADE.

Applications may be made in the manner provided by law to compel the discovery and production of books, papers and documents relating to the merits of any civil action, pending in this Court, or of any defence in such action, in the following cases:

1. By the plaintiff, to compel the discovery of books, papers or documents in the possession or under the control of the defendant, which may be necessary to enable the plaintiff to frame his complaint, or to answer any pleading of the defendant.

2. The plaintiff may be compelled to make the like discovery of books, papers or documents, when the same shall be necessary to enable the defendant to answer any pleading of the plaintiff.

3. Either party may be compelled to make discovery, as provided by Section 405 of the Code.

RULE LII.

MOVING PAPERS, WHAT TO STATE.

The moving papers upon the application for such discovery, shall state the facts and circumstances on which the same is claimed, and shall be verified by affidavit, stating that the books, papers and documents whereof discovery is sought, are not in the possession, nor under the control of the party applying therefor. The party applying shall show, to the satisfaction of the Court or Judge, the materiality and necessity of the discovery sought, and the particular information which he requires.

RULE LIII.

ORDER FOR DISCOVERY.

Discovery may be compelled by requiring the party to produce and deposit the matters to be discovered with the Clerk for the County in which the trial is to be had, or by requiring him to deliver sworn copies thereof to the moving party, or in such other manner as may be directed by the Court. The order therefor shall specify the mode of making the discovery, and the time within which it is to be made. And when papers are required to be deposited, the order shall specify the time that the deposit shall continue.

50. Court to judge as to sufficiency of security.
51. Discovery of books and papers, how applied for.— Causes for discovery.—Either party may be compelled to make.
52. Motion for discovery must state reasons.
53. Order for discovery shall specify mode, and time.

RULE LIV.

ORDER FOR DISCOVERY TO OPERATE AS A STAY OF PROCEEDINGS.

The order directing the discovery of books, papers or other documents. shall operate as a stay of all other proceedings in the cause, until such order shall have been complied with or vacated; and the party obtaining such order, after the same is complied with or vacated, shall have the time to prepare his complaint, answer, reply, or demurrer, to which he was entitled at the time of making the order. But the Judge in granting the order may limit its effect. by declaring how far it shall operate as a stay of proceedings.

NEW TRIAL.

RULE LV.

SETTLING CASES.—EXCEPTIONS AND SPECIAL VERDICTS.

Whenever it shall be intended to move for a new trial, (except for irregularity, surprise, or upon the minutes of the Judge,) or to review by appeal, or otherwise, a trial by a jury, by the Court, or by referees, a case, or exceptions, or case containing exceptions, (as may be proper, and the party elect,) shall be prepared by the party intending to make the motion, or to review the trial; and a copy thereof shall be served on the opposite party within ten days after trial, if by a jury, or within ten days after written notice of the filing of the decision, if the trial be by the Court, or by referees,; and the party served may, within ten days thereafter, propose amendments thereto, and serve a copy thereof on the party proposing the case or exceptions,who may then, within four days thereafter, serve the opposite party with a notice, that the exceptions, with the proposed amendments, will be submitted, at a time and place to be specified in the notice to the Judge or referee before whom the cause was tried, for settlement. The Judge or referee shall thereupon correct and settle the case, as he shall deem to consist with the truth of the facts. The time for settling the case must be specified in the notice, and it shall not be less than four, nor more than twenty days, after service of such notice. The lines of the case shall be so numbered that each copy shall correspond. Cases reserved for argument, and special verdicts, shall be settled in the same manner.

RULE LVI.

EXCEPTION, WHAT TO CONTAIN.—AMENDMENTS, HOW TO BE MARKED.

Exceptions shall only contain so much of the evidence as may be necessary to present the questions of law upon which the same were taken on the trial, and it shall be the duty of the Judge, upon settlement, to strike out all evidence and other matters not necessarily inserted.

Whatever amendments to a case, or exceptions, are proposed, the party proposing such case or exceptions, shall before submitting the same to the Judge for settlement, mark upon the several amendments his proposed allowance or disallowance thereof.

54. Order for discovery to operate as a stay of proceedings.—But Judge may limit its effect.
55. On new trial exceptions to be served on opposite party.—Judge may correct & settle case.
56. What exceptions shall contain.—Amendments, how marked.

RULE LVII.

FILING CASE OR EXCEPTIONS.—ORDER DECLARING CASE ABANDONED.

Where a party makes a case or exceptions, he shall procure the same to be filed within ten days after the same shall be settled, or it shall be deemed abandoned, and on filing affidavit that such case, or exceptions, has not been filed, and showing the time of the settlement thereof, and that more than ten days have elapsed from the time of such settlement, an order of course may be entered, declaring the same abandoned, and the party may proceed as if no case, or exceptions, had been made.

RULE LVIII.

STATEMENT OF FACTS ON APPEAL TO THE SUPREME COURT.

A party desiring to appeal to the Supreme Court, in any action tried by the Court or referees may have the facts upon which the decision was based settled for the purposes of such appeal; and, for the purpose of such settlement, the party shall, within twenty days after notice of the judgment, propose and serve on the opposite party such a statement of the facts as he deems proper. The party upon whom such a statement is served, may, within twenty days after such notice prepare such amendments to the statement as he may deem proper; which amendments shall be in writing, and served on the moving party. The party preparing the original statement may give eight days' notice, that the statements and amendments will be presented for settlement to the Judge who delivered the opinion in the case, or if no opinion was delivered, to the presiding Judge of the Court. Such Judge shall settle the facts, and upon the statement as settled by him he shall endorse an order that the statement be attached to the Judgment Roll.

RULE LVIX.

CASE, HOW WAIVED, AND WHEN DEEMED SETTLED.

If the party shall omit to make a case or exceptions, or statement of facts, within the time above limited, he shall be deemed to have waived his right thereto; and when the same is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the Judge or referee, they shall respectively be deemed, the former to have agreed to the case as proposed, and the latter to have agreed to the amendments as proposed.

FORECLOSURE.

RULE LX.

REFEREE TO COMPUTE AMOUNT DUE ON MORTGAGE.—WHEN PROOF OF FACTS TO BE TAKEN.—JUDGMENT.—PROOF OF FILING LIS-PENDENS.

If in an action to foreclose a mortgage, the defendant fails to answer within the time allowed for that purpose, or the right of the plaintiff, as stated in the complaint is admitted by the answer, the plaintiff may have an order referring it to

57. Filing exceptions.—Order declaring case abandoned.
58. Appeal to Supreme Court: what it must contain.—Order of Judge on settlement of facts.
59. Case how waived, and when deemed settled.
60. Proceedings in foreclosure.—Reference to compute amount due.

the Clerk, or to some suitable person as referee, to compute the amount due to the plaintiff, and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgages has not become due. If the defendant is an infant, and has put in a general answer by his guardian, or if any of the defendants are absentees, the order of reference shall also direct the person to whom it is referred, to take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff, or his agent, on oath, as to any payment which may have been made, and to compute the amount due on the mortgage, preparatory to to the application for judgment of foreclosure and sale.

Where no answer is put in by the defendant within the time allowed for that purpose, or an answer not denying any material facts of the complaint, the plaintiff after the cause is in readiness for trial, as to all the defendants, may apply for judgment at any term, upon due notice to such of the defendants as have appeared in the action, and without putting the cause on the Calendar.

The plaintiff in such case, when he moves for judgment, must show, by affidavit or otherwise, whether any of the defendants who have not appeared, are absentees, and, if so, he must produce the report as to the proof of the facts and circumstances stated in the complaint, and of the examination of the plaintiff, or his agent, on oath, as to payments which may have been made ; and in all foreclosure cases, the plaintiff when he moves for judgment, must show, by affidavit, or by the certificate of the Clerk for the county in which the mortgaged premises are situated, that a notice of the pendency of the action, containing the names of the parties thereto, the object of the action, and a description of the property in that county affected thereby, the date of the mortgage, and the time and place of recording the same, has been filed at least twenty days before such application for judgment, and at, or after the time of filing the complaint, as required by Section 155 of the Code of procedure.

RULE LXI.

JUDGMENT FOR SALE OF MORTGAGED PREMISES.

In every judgment for the sale of mortgaged premises, the description and particular boundaries of the property to be sold, so far at least as the same can be ascertained from the mortgage, shall be inserted. And, unless otherwise specially ordered by the Court the judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to raise the amount due to the plaintiff, for principal, interest, and costs, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the Sheriff of the county, or a referee : and that the plaintiff or any party, may become a purchaser on such sale ; that the Sheriff or referee execute a deed to the purchaser ; that out of the proceeds of the sale he pay to the plaintiff or his attorney, the amount of his debt, interest and costs, or so much as the purchase money will pay of the same, and that he take the receipt of the plaintiff, or his attorney, for the amount so paid. and file the same with his report of sale; and that the purchaser, at such sale, be let into possession of the premises on production of the deed.

All surplus moneys arising from sale of mortgaged premises under any judgment, shall be paid or deposited by the Sheriff or referee making the sale within five days after the same shall be received, in the manner provided by law for the securing of moneys in the custody of this Court.

60. To take proof of facts.—When judgment may be applied for.—Proof of filing *lis pendens*.
61. Description of property.—Judgment for sale.—Proceeds, and surplus, how disposed of.

RULE LXII.

HOW SHERIFF TO SELL.

When mortgaged premises or other real estate directed to be sold, consists of several distinct lots or parcels, which can be sold separately without diminishing the value thereof, on such sale, it shall be the duty of the Sheriff, or other person conducting the sale, to sell the same in separate lots or parcels unless otherwise specially directed by the Court. But, if the Sheriff or such other person be satisfied that the property will produce a greater price if sold together than if sold in separate lots or parcels, he may sell it together, unless otherwise directed in the order of sale.

RULE LXIII.

CLAIMS FOR SURPLUS MONEY.

On filing the report of the sale, any party to the action, or any person who had a lien on the premises at the time of the sale, upon the filing with the Clerk where the report of the sale is filed, a notice, stating that he is entitled to such surplus money or some part thereof, and the nature and extent of his claim, may have an order of reference, to ascertain and report the amount due to him, or to any other person, which is a lien upon surplus moneys, and to ascertain the priorities of the several liens thereon; to the end that, on the coming in and confirmation of the report on such reference, such further order may be made for the distribution of such surplus moneys as may be just. Every party who appeared in the cause, or who shall have filed such notice with the Clerk, previous to the entry of the order of reference, shall be entitled to service of a notice of the application for the order of reference, and to attend on such reference, and to the usual notices of subsequent proceedings relative to such surplus. But if such claimant has not appeared, or made his claim by an attorney of this Court, the notice may be served by putting the same into the post office, directed to the claimant at his place of residence, as it is stated in the notice of his claim.

RULE LXIV.

MORTGAGE MUST BE FILED AND RECORDED BEFORE DEED EXECUTED.

When a Sheriff or referee sells mortgaged premises, under a decree, or order or judgment of the Court, it shall be the duty of the plaintiff before a deed is executed to the purchaser, to file such mortgage in the office of the Clerk, unless such mortgage has been duly proved or acknowledged, so as to entitle the same to be recorded; in which case, if it has not been already done, it shall be the duty of the plaintiff to cause the same to be recorded at full length, in the County or counties where the lands so sold are situated, before a deed is executed to the purchaser on the sale: the expense of which filing and recording, and the entry thereof, shall be allowed in the taxation of costs; and, if filed with the Clerk, he shall enter in his minutes the filing of such mortgage, and the time of filing; but this rule shall not extend to any case where the mortgage appears, by the pleadings or proof in the action commenced thereon, to have been lost or destroyed.

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62. How Sheriff shall sell lands.
63. Claims for surplus money; How established.—Notice to be served on every party.—May be sent by mail.
64. Mortgage to be filed and recorded before title can be executed.—Expense, how paid.

PARTITION.

RULE LXV.

PARTITION OF LANDS HELD IN COMMON.

When several tracts or parcels of land lying in this State are owned by the same persons in common, no separate action for the partition of a part only, shall be brought, without the consent of all parties interested therein; or, if brought without such consent, the share of the plaintiff may be charged with the whole costs of the proceeding. And when infants are interested, it shall be stated whether the parties own any other lands in common.

RULE LXVI.

REFERENCE AS TO THE TITLE WHERE NO DEFENCE IS INTERPOSED.

Where the rights and interests of the several parties, as stated in the complaint, are denied or controverted, if any of the defendants are infants, or absentees, or unknown, the plaintiff, on an affidavit of the fact, and notice to such of the parties as have appeared, may apply for an order of reference, to take proof of the plaintiff's title and interest in the premises, and of the several matters set forth, and to ascertain and report the rights and interests of the several parties in the premises, and an abstract of the conveyances by which the same are held.

MOTIONS AND ORDERS.

RULE LXVII.

ARGUMENTS AND MOTIONS HOW NOTICED, AND DEFAULTS THEREON.—ORDERS TO SHOW CAUSE, WHEN GRANTED AND HOW RETURNABLE.—IRREGULARITIES TO BE STATED.

All questions for argument, and all motions, shall be brought before the Court on a notice, or by an order to show cause under Section 418 of the Code; and if the opposite party shall not appear to oppose, the party making the motion or obtaining the order shall be entitled to the rule or judgment moved for, on the proof of due service of the notice or order and papers required to be served by him, unless the Court shall otherwise direct. Such order shall only be granted when a special reason for a notice of less than four days appears on the papers presented, and the party shall in his affidavit, state the present condition of the action, and whether at issue. And when the motion is for irregularity, the notice or order shall specify the irregularity complained of.

RULE LXVIII.

POINTS OF MOTIONS.—DISCUSSION OF FACTS.

In all calendar motions each party shall briefly state upon his points the leading facts which he deems established, with a reference to their folios, where the evidence of such facts may be found; and the Court will not hear an extended discussion on a mere question of fact.

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65. Of the partition of lands held in common. 66. Reference as to title.
67. Questions for argument, and motions; How brought before the Court.—Irregularities.
68. Points to be stated.—Discussion of facts.

RULE LXIX.

ARGUMENT AND REPLY.

On all rules to show cause, where a party failing to answer would be in contempt, the party called on shall begin and end his cause; and on all motions or special matters, either springing out of a cause or otherwise, the actor, or party submitting the same to the Court, shall, in like manner, begin and close; and so shall the defendant, where he admits the plaintiff's case, and takes upon himself the burthen of proof, have the like privilege. The party having the opening in an argument shall disclose his entire case, and on his closing shall be confined strictly to a reply.

RULE LXX.

ADVICE OF COUNSEL, HOW STATED.

Whenever it shall be necessary, in any affidavit, to swear to the advice of counsel the party shall, in addition to what has usually been inserted, swear that he has fully and fairly stated the case to his counsel, and shall give the name and place of residence of such counsel.

RULE LXXI.

SUBSEQUENT APPLICATION FOR ORDER AFTER TRIAL.

If any application for an order be made to any Judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts shall be made to any other Judge, and, if upon subsequent application, any order be made, it shall be revoked; and in the affidavit for such order, the party or his attorney, shall state whether any previous application for such order has been made.

RULE LXXII.

AFFIDAVITS IN MITIGATION, HOW SUBMITTED.

In the Court of General Sessions, the defendant, after verdict against him, shall not be permitted to submit any affidavit to the Court which goes to deny matters of fact; but he may submit affidavits as to matters in extenuation or mitigation: Provided, they are filed so as to allow the Attorney General or Solicitor a reasonable time to answer them.

RULE LXXIII.

TIME FOR COMPLYING WITH ORDERS.

In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith, shall have twenty days for that purpose, unless otherwise directed in the order; but, where costs to be adjusted are to be paid, the party shall have fifteen days to comply with the order after the costs shall have been adjusted by the Clerk on notice, unless otherwise ordered.

RULE LXXIV.

ORDERS ON PETITIONS.

Orders granted on petitions, or relating thereto, shall refer to such petitions by

69. Argument and reply.
70. Advice of counsel how to be stated.
71. Application for order after refusal.
72. Affidavit in mitigation, how submitted.
73. Time for complying with orders limited.

the name and description of the petitioners, and the date of the petitions, if the same be dated, without reciting or setting forth the tenor or substance thereof unnecessarily. Any order or judgment directing the payment of money, or affecting the title to property, if founded on petition, where no complaint is filed, may, at the request of any party interested, be enrolled and docketed as other judgments.

RULE LXXV.

STAYING SALE IN FORECLOSURE, ON PETITION.

No order to stay a sale under a judgment in partition, or for the foreclosure of a mortgage, shall be granted or made by a Judge out of Court, except upon a notice of at least four days to the plaintiff, or his attorney.

SURETIES.

RULE LXXVI.

SURETIES TO JUSTIFY, AND VALUE OF SECURITY TO BE PROVED.—UNDERTAKING TO BE ACKNOWLEGED.

Whenever a Judge or other officer, approves of the security to be given in any case, or reports upon its sufficiency, it shall be his duty to require personal sureties to justify; and all bonds and undertakings shall be duly proved by a subscribing witness, or acknowledged in like manner as deeds of real estate, before the same shall be received or filed.

RULE LXXVII.

BAIL, WHERE TO JUSTIFY.

Whenever sureties are required to justify, they shall justify within the county where the defendant shall have been arrested, or wherein the sureties reside.

FILING PAPERS.

RULE LXXVIII.

WHERE PAPERS TO BE FILED.

Papers shall be filed in the county specified in the complaint as the place of trial, or in the county to which the place of trial has been changed. And, in case the place of trial is changed, for the reason that the proper county is not specified, papers on file at the time of the order making such change, shall be transferred to the county specified in such order, and all other papers in the cause shall be filed in the county so specified.

RULE LXXIX.

UNDERTAKINGS AND AFFIDAVITS TO BE FILED.

It shall be the duty of the plaintiff's attorney forthwith to file with the Clerk for the proper county, all undertakings given upon procuring an order of arrest, an injunction order, or an attachment, with the approval of the Judge taking the same endorsed thereon; and in case such undertakings shall not be filed within

74. Orders on petition may be enrolled and docketed as judgments.
75. Staying sales in foreclosure.—Notice to plaintiff.
76. Sureties must justify.—Bonds or undertakings not proved, cannot be received or filed.
77. Sureties to justify in their own county. 78. Where papers shall be filed.
79. Papers may be transferred: How, and why

five days after the order of arrest, of injunction, or attachment, has been granted the defendant shall be at liberty to move the Court to vacate the proceeding for irregularity, with costs, as if no undertaking had been given. It shall also be the duty of the attorney to file, within the same time, and under the like penalty, the affidavits upon which an injunction or attachment has been granted, and, also the affidavit upon which an order for the service of a summons by publication, or an order for a substituted service of a summons has been granted, together with the order for such service.

RECEIVERS.

RULE LXXX.

POWERS OF RECEIVERS OF DEBTOR'S ESTATE.—WHEN ALLOWED HIS COSTS.—SALE OF DOUBTFUL CLAIMS AT AUCTION.

Every receiver of the property and effects of the debtor, shall, unless restricted by the special order of the Court, have general power and authority to sue for and collect all the debts, demands and rents belonging to such debtor, and to compromise and settle such as are unsafe and of a doubtful character. He may also sue in the name of a debtor, where it is necessary or proper for him to do so; and he may apply for and obtain an order of course, that the tenants of any real estate belonging to the debtor, or of which he is entitled to the rents and profits, attorn to such receiver, and pay their rents to him. He shall also be permitted to make leases from time to time, as may be necessary, for terms not exceeding one year. And it shall be his duty, without any unreasonable delay, to convert all the personal estate and effects into money; but he shall not sell any real estate of the debtor, without the special order of the Court, until after judgment in the cause. He is not to be allowed for the cost of any suit brought by him, against an insolvent, from whom he is unable to collect his costs, unless such suit was brought by order of the Court, or by the consent of all the parties interested in the funds in his hands. But he may, by leave of the Court, sell such desperate debts, and all other doubtful claims to personal property, at public auction, giving at least ten days' public notice of the time and place of such sale.

RULE LXXXI.

All rules heretofore adopted for the government of the practice of the Circuit Courts of this State, shall be, and they are hereby repealed. In cases where no provision is made by Statute, or by these Rules, the proceedings shall be according to the practice as it has heretofore existed in the Courts of Law and Equity, in this State, in cases not provided for by Statute, or written Rules of the Court.

THE STATE OF SOUTH CAROLINA.

I, ALBERT M. BOOZER, Clerk of the General Session of the Justices of the Supreme and Circuit Courts, hereby certify, that the foregoing is a correct copy of the Rules adopted at the Session, ending Sixteenth December, Eighteen hundred and seventy.

ALBERT M. BOOZER, Clerk.

79. Undertakings and affidavits to be filed within time limited.
80. Powers of a receiver.—When receiver may be allowed costs.
81. Repeal of all former Rules.—Proceedings in cases not herein provided for, or in Statutes

RULES

OF THE

SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

ADOPTED AT APRIL TERM, 1872.

RULE I.

RETURN—WHAT TO CONTAIN.

When the appeal is from a judgment, the return of the Clerk of the Court below shall consist of certified copies of the notice of appeal, and the judgment-roll. When the appeal is from an order, as allowed by the eleventh section of the Code of Proceedure, the return shall consist of certified copies of the notice of appeal, the order appealed from, and the papers on which the Court below acted in making the order.

RULE II.

RETURN, WHEN FILED,—DISMISSAL OF APPEAL FOR DEFAULT.

The appellant shall cause the proper return to be made, and filed with the Clerk of this Court within twenty days after the appeal shall be perfected. If he fail to do so, the respondent may, by notice in writing, require such returns to be filed within ten days after the service of the notice; and if the return be not filed, in pursuance of such notice, the appellant shall be deemed to have waived the appeal, and on an affidavit proving when the appeal was perfected, and the service of such notice, and a certificate of the Clerk, that no return has been filed, the respondent may enter an order with the Clerk, dismissing the appeal for want of prosecution, with costs; and the Court below may thereupon proceed as though there had been no appeal.

RULE III.

RETURNS—REMEDY FOR DEFECTS.

If the return made by the Clerk of the Court below shall be defective, either party may, on affidavit specifying the defect, apply to one of the Judges of this Court, for an order that the Clerk make a further return without delay.

1. What returns shall contain.
2. When returns shall be filed.—Dismissal for failure to file.
3. Defective returns, how they may be remedied.

RULE IV.

ATTORNEYS AND GUARDIANS AD LITEM.

The attorneys and guardians *ad litem* of the respective parties in the Court below, shall be deemed the attorneys and guardians of the same parties respectively in this Court, until others shall be retained or appointed, and notice thereof shall be served on the adverse party.

RULE V.

CASE OR BRIEF—WHAT TO CONTAIN.

In all appeal causes, a case shall be made by the appellant which shall consist of a copy of the return of the Clerk, and the reasons of the Court below for its judgment, if the same can be procured. If the case is voluminous, an index to the pleadings, exhibits, depositions and other principal matters, shall be added.

Instead of the return of the Clerk, the case may contain a brief of the pleadings, proceedings and determination of the Court below, together with the reasons of the determination, provided the case be printed and served in the manner provided in Rules VI and VII.

The brief shall set forth the following particulars:

1. The title of the action.
2. The time of commencement of action.
3. The names of all defendants served or who appeared.
4. The general nature and character of the pleadings, specifying such defendants as answered or demurred, and the general nature of each answer, when several answers are filed.
5. When issues of fact are settled the order settling the same.
6. The mode in which the case was tried, whether by the Court, by a jury, or by referees.
7. When error of law is alleged, the facts or conclusions of fact to which such error relates.
8. When error of fact is alleged, the evidence or fact on which the determination complained of was based.
9. The judgment, order, finding, ruling or decision complained of.
10. If error is alleged in the charge to the jury, the request to charge, the charge and the exceptions.
11. When the question to be determined involves the construction of any pleading, judgment, order, charge or instrument, the whole matter thereof shall be set forth, but if some matter constituting a distinct and separate part thereof is involved in such construction, only such distinct and separate part need be stated in full, and the residue thereof may be briefly stated according to its general nature and effect.
12. All changes in parties.
13. The date of the judgment, or order appealed from, and of the appeal.

RULE VI.

PRINTED PAPERS,—HOW PREPARED—EFFECT OF NON-COMPLIANCE.

All papers printed for the use of the Court shall be printed on white writing

4. Attorneys and Guardians to be the same as in the lower Court.
5. What Brief must contain.
6. How the Brief shall be prepared.

paper with a margin on the outer edge of the leaf not less than one-and-a-half-inches wide.

The printed page, exclusive of any marginal note or reference, shall be seven inches long, and three-and-a-half inches wide. The folio (of one hundred words) numbering from the commencement to the end of the case, shall be printed on the outer margin of the page. Small pica, solid, is the smallest letter, and most compact mode of composition which is allowed. No charges for printing the papers mentioned in this rule shall be allowed as a disbursement in a cause, unless the foregoing requirement shall be shown by affidavit to have been complied with, in all papers hereafter printed; nor when the brief shall, upon the argument of the cause, be held by the Court to be insufficient or defective.

RULE VII.

CASE OR BRIEF—SERVICE OF—EFFECT OF NON-COMPLIANCE.

Within forty days after the appeal is perfected, the appellant may serve three copies of the case or brief as prepared for argument on the attorney of the adverse party. If he fail to do so, the respondent may, by notice in writing, require the service of such copies within ten days after the service of the notice, and if the copies be not served in pursuance of such notice, the appellant shall be deemed to have waived the appeal; and on an affidavit proving the default and the service of such notice, respondent may enter an order with the Clerk, dismissing the appeal for want of prosecution, with costs; and the Court below may thereupon proceed as though there had been no appeal.

RULE VIII.

CASE OR BRIEF, AND POINTS FURNISHED FOR COURT.

At the commencement of the argument the appellant shall furnish six copies of the case or brief to the Clerk. Each party shall at the same time furnish six copies of the points. The cases or briefs and points delivered to the Clerk shall be disposed of as follows; one copy of each to the Judges, one for the Clerk, one for the reporter, and one for the library of the Supreme Court.

RULE IX.

POINTS AND AUTHORITIES.

Previous to the commencement of the argument of any case, the Counsel for the respective parties will furnish the Court with a statement of the propositions of law and fact relied on, and of the authorities and references to the evidence, where such reference is required.

RULE X.

DOCKETING CAUSES—ORDER ON DOCKET.

Upon the filing of the return of the Court below, in conformity to the rules of this Court, the cause will be docketed by the Clerk. Causes will be placed upon the docket according to the respective circuits in which they originally depended, and in the order in which the returns were filed.

7. Copies of the brief must be served on the adverse party.
8. Copy of brief to be furnished for the use of the Court.
9. Points and authorities to be furnished to the Court.
10. How appeals shall be docketed.

Every cause shall be docketed before the day assigned for the call of causes from the Circuit to which it belongs, except by special order of the Court.

RULE XI.

DEFAULT OF APPEARANCE,—ORDER UPON.

If, on the call of a cause, either party fail to appear, or shall neglect to furnish and deliver the papers required by Rule VIII, the opposite party may proceed as follows: The appellant may argue or submit the cause in his behalf, the respondant may have an order dismissing the appeal. When neither party appears to argue on the call of a cause, it will stand continued at the first term.

RULE XII.

CRIMINAL CAUSES,—ORDER OF HEARING.

Criminal causes shall have a preference, and may be moved on behalf of the State, out of their order.

RULE XIII.

COUNSEL,—NUMBER LIMITED.

In the argument of causes, not more than two counsel will be heard upon each side, unless the Court shall otherwise permit.

RULE XIV.

MEMBERS OF THE BAR AND OFFICERS OF THE COURT NOT TO SIGN AS SURETIES.

No member of the Bar, or officer of the Court shall sign as surety any bond or other obligation which may be required by any order of this Court, under pain of being in contempt.

RULE XV.

MEMBERS OF THE BAR,—DRESS.

No member of the Bar will be heard unless wearing a black coat.

RULE XVI.

ATTORNEYS,—AFFIDAVITS BEFORE.

No affidavit will be considered by the Court, which has been sworn to before an attorney engaged in the cause, or matter, or before any party interested therein.

RULE XVII.

NO ARGUMENT AFTER DECISION.

Counsel shall not attempt to argue or explain a case, or any matter arising therein, after he has been heard, and the opinion of the Court has been pronounced.

11. Appeal, how affected by non appearance.
12. Appeals in criminal cases to have preference.
13. Number of attorneys limited.
14. Officers of Court, or Attorneys not to be sureties.
15. Dress of members of the Bar.
16. Affidavit before attorney engaged in cause.
17. Argument after decision.

RULE XVIII.

CONSENT MUST BE IN WRITING.

No private agreement, or consent between the parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent, and entered; or, unless the evidence thereof shall be in writing, subscribed by the party against whom the same shall be alleged, or his attorney or counsel.

RULE XIX.

SPECIAL MOTIONS—NOTICE OF HEARING, DISMISSAL.

Motions, other than those that arise on the call of a cause, will be heard at the opening of the Court on the morning of the day fixed for the call of causes from the circuit to which it appertains, and not afterwards without the special leave of the Court.

When notice has been given of a motion, if any one shall appear to oppose, it will be granted as of course, upon the production of the notice of motion, and an affidavit or admission of due service thereof. If a motion be not made on the day for which it has been noticed, the opposing party will be entitled, on applying to the Court at the close of the motions for that day, to a rule denying the motion, with costs.

RULE XX.

REMITTITUR—FORM OF, WHEN RETAINED ON DEFAULT.

The remittitur shall contain a copy of the judgment of this Court, and shall be sealed with the seal, and signed by the Clerk of this Court.

When a decree or order shall be affirmed, or an appeal dismissed, by default of appearance by the appellant, the remittitur shall not be sent to the Court below, unless this Court shall otherwise direct, until ten days after notice of the affirmation or dismissal shall have been served on the attorney of the party in default. Service of notice shall be proved to the Clerk by affidavit, or by written admission of the attorney on whom it was served.

RULE XXI.

ORDER FOR EXTENTION OF TIME, OR STAY OF PROCEEDINGS BY A SINGLE JUSTICE.

The time prescribed by these rules for doing any act may be enlarged by the Court, or by either of the Judges thereof: and either of the Judges may make orders to stay proceedings, which, when served, with the papers on which it was made, and notice of motion, shall stay the proceedings, according to the terms of the order. Any order may be revoked or modified by the Judge who made it, or in case of his absence or inability to act by either of the other Judges.

RULE XXII.

ORDERS—SERVICE OF, CASES OF CONTEMPT.

To make the service of an *ex parte* order, or rule to show cause effectual, a copy

18. Consent must be in writing.
19. Notice and hearing of motions, and dismissal.
20. Remittitur,—to contain what, and when retained on default.
21. Orders for extension, or stay.

of the affidavits, or other proofs on which it was granted, must be served with a copy of such order or rule, and in order to bring any person into contempt for the disobedience of an order, the original order must be exhibited to such person, and a copy thereof left with him. When any person avoids the service of an order, on application to this Court, or to one of the Justices thereof, making proof of such fact, special directions will be given as to the service thereof.

RULE XXIII.

ADMISSION TO PRACTICE.

Applicants for admission to practice as attorneys and counsellors in this Court, who are entitled to examination, shall be examined in open Court at a regular term thereof, and no private examination shall be permitted. Such application shall be in writing, accompanied by the proofs required by law, and shall be filed on or before the second Tuesday of each regular term.

RULE XXIV.

RULES—WHEN TO TAKE EFFECT.—FORMER RULES.

These rules shall take effect on the first day of June next, from which time all former rules are abrogated, except so far as may be necessary to follow them in cases where causes are already prepared for argument, and except also, that all cases not herein provided for are governed by the existing rules and practice of this Court, so far as such rules and practice are conformable to existing laws.

May 15th, 1872.

F. J. MOSES, C. J.
A. J. WILLARD, A. J.
J. J. WRIGHT, A. J.

THE STATE OF SOUTH CAROLINA.

IN THE SUPREME COURT.

APRIL TERM, 1872.

I, Albert Boozer, Clerk of the Supreme Court of South Carolina, do hereby certify, that the foregoing twenty-four rules were this day adopted by the said Supreme Court.

Witness my hand and the seal of said Court, at Columbia, this 15th day of May, A. D. 1872.

[SEAL] *ALBERT M. BOOZER.*

CLERK OF THE SUPREME COURT OF SOUTH CAROLINA.

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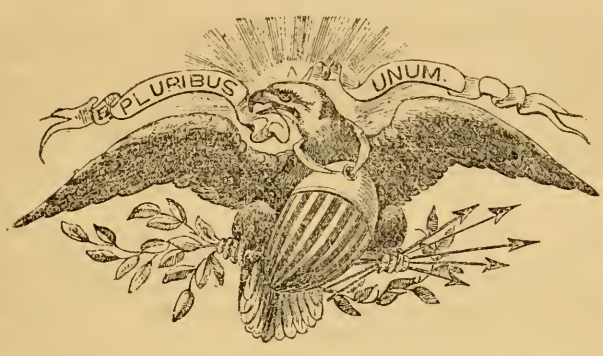
22. Service of orders.
23. Admission of attorneys to practice in Supreme Court.
24. When Rules to go into effect.



CHAPTER III.

RULES

OF THE

FEDERAL COURT FOR THE DISTRICT OF SOUTH CAROLINA.

ADOPTED MAY 10, 1813: NOW OF FORCE.

For the orderly conducting of Business in the District Court of South Carolina, as well on its *instance side*, in cases of Common Law, as on its *admiralty side*, in cases of Maritime Jurisdiction: It is ordered by the said Court, that the following Rules be observed.

ON ITS INSTANCE SIDE.

RULE I. That the Marshal do return all writs and other processes, on the first day of the term; and that they be returnable on that day accordingly.

RULE II. That defendants be entitled to an imparlance on filing special bail, when required.

RULE III. That Juries be drawn and *venire* issued, on the first day of each term, for the succeeding Court, should the business of that day permit, if not, on any other day during the term, by permission of the Court.

1. When Marshal to return writs.
2. When defendants are entitled to imparlance.
3. When juries shall be drawn.

RULE IV. That writs of *venire facias* issue from the Clerk's office; and be served and returned by the marshal, in his proper person; or by his Deputy; or in case the Marshal, or his Deputy, be not an indifferent person, or be interested in the event of any cause, then they are to be served and returned by such fit person, or persons, as the Court shall specially appoint for that purpose; agreeably to the tenor and constitution of the 27th, 28th, and 29th sections of the Judiciary Act.

RULE V. In future, all persons who have been admitted attorneys of the Court of Common Pleas of this State, and have practiced therein, during the term of one year, or who have been admitted into the Circuit Court of this District, and whose private and professional character appear fair, may, on petition in writing, duly presented in this Court, stating such admission and practice, be admitted to practice therein.

RULE VI. That the service of writs, and other processes, issued from this Court, be proved before the Clerk, any time in vacation.

RULE VII. The Clerk of this Court in the absence of the Judge, on good and sufficient cause being shown, may make the necessary orders for holding to bail, on writs instituted in this Court.

RULE VIII. The Marshal of this Court shall give due notice in one of the newspapers of this city to the jurors and others concerned, of the time and place of the meeting of this Court; and should it be adjourned to any future day, or days, before the commencement of the next regular term, it shall be his duty to give such due notice of the same. And the charges incidental thereto, are to be defrayed out of the fines inflicted upon defaulters, or from any other moneys from whence the same may be lawfully discharged.

RULE IX. The names of the defaulting jurors shall be hereafter notified by the Clerk, in one of the newspapers of this city, three weeks immediately preceding the sitting of the Court, then next succeeding; and upon neglect to answer the said notice satisfactorily, or not giving a sufficient excuse, on oath, the said defaulter shall be fined by the Court.

RULE X. Pleas, replications, and all other subsequent pleadings shall be filed within ten days after service of the rule on the party to file such plea, or on his attorneys; in default whereof, the plaintiff's attorney shall be at liberty to take his order for judgment; or the defendant's attorney his judgment of *non pros.*

RULE XI. On all declarations filed, a ten day rule to plead shall issue.

RULE XII. The Marshal shall pay over to the District Attorney, or other proper officer, all monies received by him, under executions, at the suit of the United States, immediately on the receipt thereof.

4. Writs of *venire* to be served by the Marshal.
5. Admission of attorneys.
6. Proof of service before Clerk.
7. Clerk may hold to bail in absence of Judge.
8. Marshal to give public notice of Term.
9. Defaulting Jurors to be gazetted.
10. Pleadings, when to be filed.
11. Ten day rule to plead.
12. Marshal to pay over moneys.

RULE XIII. All rules against the Marshal, to pay over monies in his hands, shall be returnable in four days; or for a longer or shorter time in particular cases upon cause shown.

RULE XIV. On motion made for any special order of Court, the order proposed shall be submitted to the Court, in writing, by the counsel or party making it; and if granted by the Court, it shall be delivered to the Clerk for insertion in the Journals.

RULE XV. No practising attorney shall be received as special bail for any person; nor as security for any officer of this Court.

RULE XVI. In all cases wherein no particular rules are herein before set down, the practice of the Court of Common Pleas, of South Carolina, shall be pursued; so far as the same be not repugnant or contrary to these rules, or the laws of the United States.

RULE XVII. In all cases where the Plaintiff sues out a Writ of Error, he shall enter into a bond, with security, in a sum not exceeding three hundred dollars, and in all cases where the defendant shall sue out a Writ of Error, he shall also enter into a bond in a sum not exceeding three hundred dollars, and ten per cent. on the amount demanded, to cover such damages as the Court may impose for delay.

RULE XVIII. When commissions to examine witnesses respecting pensions, are required, application shall be made to the Clerk of the Court; upon which he shall deliver one to the party applying, he or they paying the proper fee to him for so doing, if required.

RULE XIX. All Rules and Orders heretofore made for regulating the practice of this Court, shall be, and they are hereby repealed.

JOHN DRAYTON,

Judge of the District Court of South Carolina.

13. Rules against Marshal. When returnable.
14. Notices for special orders to be in writing.
15. No attorney to be bail, or surety.
16. Cases coming under no specific rule to conform to practice in the Common Pleas.
17. Party suing out writ of error to give bond.
18. Commissions to examine witnesses, how obtained.
19. Repeal of all existing Rules.

RULES

IN THE

UNITED STATES CIRCUIT COURT OF SOUTH CAROLINA,

IN CASES OF COMMON LAW : NOW OF FORCE.

PROCESS.

RULE I. Rules shall be held monthly in Clerk's office, on the first Monday in every month, for the purpose of entering all proceedings and orders which may be taken or made in open Court. The rules shall be held under the direction of the Clerk; but either of the Judges of the Court may make or allow any special order in any cause not inconsistent with the regulations herein prescribed, which shall be entered in the Rule Book, and take effect accordingly.

RULE II. All processes shall be made returnable to the next succeeding term, or to any intermediate Rule day, at the election of the party sueing out the process, and the return of such process executed, shall be effectual, whereon to ground any subsequent proceedings.

RULE III. Where any person, plaintiff or defendant in any suit, shall be dead, it shall be lawful for the Clerk at Rules, upon application, and suggestion of the death, to issue process, to bring into Court the executors or administrators of such deceased person, to be substituted for the deceased party; and he may also, on motion of the executors or administrators of a deceased party, permit them to enter themselves as parties, and to proceed in such suit.

RULE IV. On process returnable to Rules or otherwise, the Marshal shall be allowed time for serving the same at the rate of ten miles per diem, counting from Charleston, and from the date of entry in his office; and if he cannot with due diligence return such process to the Rules or Court, to which it is returnable, he may return it to the next Rules. A copy left at the defendant's usual place of residence shall be a sufficient service.

1. Rules to be holden monthly in the Clerk's office, under direction of Clerk.
2. Process shall be returnable to the next term, or any intermediate Rules day.
3. Executors or administrators to be substituted for deceased party.
4. Time given to Marshal for serving process.

RULE V. Whenever a writ shall be returned, the declaration may be filed immediately after the return; and whenever filed on a Rule day, the defendant shall be bound to take notice, and plead accordingly, without a rule to plead. In all other cases a rule to plead shall be specially taken out and served upon him or his attorney. If a declaration shall not be filed within six rules after return of the writ served, it shall not afterwards be filed without leave of Court.

RULE VI. A defendant shall be allowed time to file his plea to an action at the rate of five miles per diem, for the distance of his residence from the Court-house in Charleston, counting from the Rule day on which the declaration shall be filed, when filed on a Rule day; and counting from the day of the service of the rule to plead, when filed on any other day. But where the general issue is tendered, and nothing but a "similiter" wanted to make up the issue, a special order may be taken for the other party to reply instanter. And the same time shall be allowed the parties to a suit as to all subsequent pleadings, counting always from the Rules at which, or next before which the plea to be answered, was filed. But in all cases except that of the similiter, time until the next Rules shall be allowed, and the additional time at the rate aforesaid, whenever the distance of the party's residence entitles him to more, in which last case, the time to the Rules shall be counted as part.

RULE VII. Whenever a party fails to comply with the 6th Rule, an order for judgment, or of non pros, may be entered at the Rules; but the same may be set aside at the next Rules, on motion, payment of costs, and pleading instanter, or for special cause shewn, on motion made within the first two days of the next term; in which latter case the Court will impose such other reasonable terms as the ends of justice may require.

RULE XIII. A copy of every open account, and of every deed, or other writing declared on, shall be filed with the Clerk at the time of filing the declaration; and the defendant may have oyer of the original bond, deed, or other writing, before he shall be required to file his plea, provided notice of a demand of oyer be served on the plaintiff's attorney ten days before the day on which the defendant is bound to plead to the action.

RULE IX. If any frivolous or deceitful pleas be filed, the adverse party shall not be obliged to demur to the same; but the Clerk may give an order for judgment or non pros, at the Rules, and the party against whom it is given shall be held to his motion to set aside such order at the next term, as under the seventh Rule.

RULE X. No plea of *plene administravit* shall be received and filed unless accompanied with an office copy of the inventory or appraisement of the estate; and the defendant tendering such plea shall be bound on ten days' notice in writing, to deposit with the Clerk a full account of his administration on oath, or the book or books containing the same.

RULE XI. Whenever any gentleman of the bar shall leave with the Clerk instructions how to direct him by mail, and a request to have the benefit of this rule

5. Declaration to be filed—When. When rule to plead must be taken out.
6. Time given to parties to file pleas.
7. On failure to plead, order for judgment may be taken.
8. Copies of all papers declared on to be filed.
9. Frivolous pleas need not be demurred to.
10. Plea of *plene administravit* not received unless accompanied by inventor and appraisement.

it shall be the duty of the Clerk after the Rules, to forward to such gentleman an abstract of all the Rules, orders and entries made on each Rule day, for which the Clerk shall be entitled to demand one dollar each month.

JUDGMENTS.

RULE 12. All judgments obtained at the same term, and entered up agreeably to the next rule, shall be of the same rank as to precedence. The same shall be regularly docketed, as heretofore, in a book kept for the purpose, having successive columns, exhibiting at one view the date, the time, and nature of the executions sued out, the returns upon the same, and the date of satisfaction, with a column for miscellaneous occurrences.

RULE 13. Judgments, to retain their rank or precedence under the preceding rule shall be entered up within five days after the party is entitled to the same; but may be entered at any time before the second term after, to take precedence from date. If not entered before the said second term, they shall not be entered without a motion at Rules, or in open court; and then not until the Rules next after such motion.

RULE 14. In all cases where judgment shall be signed for a penalty, satisfaction shall be entered on payment of principal, interest, and costs; and where the condition is for the performance of something other than the payment of money, the Court will order a writ of inquiry upon the condition, to determine the real amount due.

RULE 15. If a motion in arrest of judgment or for new trial is intended to be made, the party shall give notice thereof, and of his grounds, within two days after verdict. No motion in arrest of judgment shall be heard after a new trial once had; but the motion in arrest of judgment and for a new trial may, in the first instance, be made simultaneously.

RULE 16. If an order for judgment be taken be default, or judgment be given for plaintiff, on demurrer, the Court, on motion of plaintiff, will assess damages, if the action be on a single bill, promissory note, bill of exchange, or any written contract, or in all such cases the petit jury, attending the Court, may assess the damages, as in case of writ of inquiry at common law. The plaintiff in such case shall produce the writing on which the action is founded, but the execution shall be considered as established.

RULE 17. To prevent fraud in entering up judgment on warrant of attorney, no such judgment shall be signed unless accompanied with an affidait of the debt specifying the amount actually due, and a legal verification of the letter of attorney. And if the warrant be of a date twelve months or more anterior, the affiant shall further swear to his belief that the defendant is still living.

RULE 18. If a plaintiff take an order for judgment, the defendant may, notwithstanding file his plea, and take the steps necessary to have an issue made up if he means to move to set the order aside. The plaintiff in such case shall be

11. Bar entitled to abstract of the Rules on paying Clerk's fees.
12. All judgments at term to take equal rank as to date.—Manner of entering.
13. Judgments to be entered up within time specified.
14. Satisfaction to be entered on full payment.
15. Motion in arrest of judgment or for a new trial to be made within two days after verdict.
16. When Court shall assess damages; when Jury.
17. Judgment not to be signed till affidavit has been made.
18. Defendant may file plea, notwithstanding order for judgment, and move to set order aside

bound to reply and await the contingency of having the order of judgment set aside, in order that there may be no delay in the event of setting aside such order for judgment.

RULE 19. Whenever the existance of unsatisfied judgments or mortgages, impedes the payment over of moneys levied, and in the Court, or in the hands of the Marshal, it shall be sufficient to advertise in some one respectable gazette, for one month, a notice to the parties interested in such judgments, to come forward and satisfy the Court that such judgments are actually subsisting unsatisfied judgments. If the parties in interest fail to do this, the Court may order the money to be paid over to the executions in the Marshal's hands.

RULE 20. Whenever judgment for the recovery of money shall be signed, if the defendant or his attorney will indorse upon record his consent that the same shall bear interest, the execution may afterwards issue at any time for the amount of the principal and interest calculated to the return day of such execution.

EXECUTIONS.

RULE 21. No execution shall issue until the Rules next after the sitting of the Court at which the judgment was obtained.

RULE 22. The Marshal shall return every execution to the Clerk, with a special note indorsed, exhibiting what has been done under each execution, which execution and return shall be filed and preserved in the record; and no new execution shall be signed until that previously issued has been duly returned, except by special order of a Judge.

DOCKETS.

RULE 23. No cause shall be docketed until the issue is made up, except where nothing is wanting but similiter, or joinder in demurrer, in which cases, the Court will, on motion, at any time during the term, order the necessary entry to be made by the Clerk.

RULE 24. The docket shall be finally made up on the second day of the term, and all causes duly docketed shall be called for trial in their order without notice of trial. Every cause called at four several terms, and not proceeded in, shall be omitted from the next docket, not to be restored but by order of Court, on cause shown; provided the same has not been continued at defendant's motion.

RULE 25. Causes to which dilatory pleas or demurrers have been filed, shall be placed on a separate part of the docket, and shall have an early call.

RULE 26. Causes marked on the docket settled, discontinued, or otherwise terminated, shall not again be docketed, without leave of Court, or consent of both parties in writing.

RULE 27. At the opening of the Court, on the first day of the term, the

19. Judgment creditors notified to establish claim.
20. Judgments may bear interest, by consent.
21. Issue of execution delayed till first Rules day, after Court.
22. Marshal to return executions to Clerk.
23. When cause may be docketed.
24. When docket finally made up.—Number of times case may be called.
25. Certain causes to have early call.
26. Cases marked settled, &c., not to be again entered without special leave, or by consent.
27. Causes to be called in their order, and but once at a term.

Court will proceed to call over the docketed causes for trial, in their order, beginning with the issues, and will call the docket but once.

RULE 28. Either party may docket a cause entitled to be docketed, and the parties to every cause duly docketed, may be compelled to trial, without any further notice.

RULE 29. Motions for continuance on the ground of absence of a witness, or the non-return of a commission, shall be accompanied with an affidavit, stating what the party expects to prove by the witness or commission, and that he is not able to prove the same by any other means. The affidavit shall also shew that due diligence has been used to procure the same, by stating the steps that had been taken, or the causes why the ordinary measures have not been pursued, to the end that the Court may be satisfied, that the party making such motion does not affect delay.

WRITS OF INQUIRY.

RULE 30. A docket shall also be made of causes in which writs of inquiry are to be executed, and no writ of inquiry shall be executed in a cause not docketed.

RULE 31. If it be in any way known to the plaintiff's attorney, that the defendant has an attorney attending on his cause, no writ of inquiry shall be executed without reasonable notice given to such attorney.

JURIES.

RULE 32. To all writs of venire, the Marshal or his deputy shall make a return on oath to the Clerk, exhibiting in three several columns those jurors on whom a summons has been served personally, those who have been summoned by copies or notices left at their houses, and those who could not be found.

RULE 33. The Clerk shall keep a book in which shall be entered the names of all persons who have been summoned as jurors, or bound in recognizance, and have made default; and he shall enter opposite to the name of each defaulter, whether he be fined or excused; if fined, the amount of the fine, and if excused, by whom excused; which book shall be exhibited to the Court at every sitting.

RULE 34. The Marshal, or his deputy, shall serve a written or printed summons on each juror, expressing the day, hour and Court at which he is to appear, and also whether he is to serve as a Common Pleas and Petit, or as a Grand Juror.

RULE 35. Within ten days after the adjournment of each Court, the Clerk shall publish in some one public print, the names of the defaulting jurors summoned to attend that term, with a notice, that on the first day of the ensuing term they will be fined according to law, unless they make sufficient excuse on oath; which publication shall be continued for three weeks, and shall be a sufficient notice to such defaulters.

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28. Either party may docket a cause.
29. Motions for continuance; how supported.
30. Enquiry docket; writ not to be executed in cause not docketed.
31. Reasonable notice to be given before writ of inquiry executed.
32. Marshal to make return on *venire*: How classified.
33. Clerk to keep list of defaulting jurors, and enter final disposition of case.
34. How the Marshal shall summons jurors.
35. Names of defaulting jurors to be published.

RULE 36. After drawing every jury, the Clerk shall fold up the names of the jurors so drawn, seal the envelope, and indorse the seal with his name, with the date of such drawing, and the Court and jury for which they were drawn; which paper shall remain sealed until the whole list be drawn throughout.

RULE 37. The jurors shall be summoned from persons legally qualified under the State laws, resident within the parishes of St. Philip, St. Michael, Christ Church, St. Thomas, and St. Andrew, for Charleston; and Richland district for Columbia.

RULE 38. When a jury cannot be had from the persons so summoned, the Court will summon a jury *de talibus circumstantibus.*

RULE 39. Jurors who have made default, may make oath, to their excuse before any State Magistrate, and file the same with the Clerk on or before the first day of the ensuing term. If the excuse be deemed insufficient, the same penalties shall be inflicted as are inflicted by the State laws, or they may be moderated by the Court, according to circumstances. The mode of collecting fines so inflicted, shall be by attachment as for contempt.

RULE 40. Persons above sixty years of age, shall be excused from serving on juries; other excuses must depend on their particular merits.

FORECLOSING MORTGAGES,

RULE 41. In suits on bonds, or other contracts, secured by mortgage, the plaintiff may enter his judgment and have his execution, as in ordinary cases; but if he proposes to have the mortgage foreclosed according to the State laws, in such case, he shall, at any time pending the suit, or after judgment, file a suggestion, stating the time when, the parties by whom and to whom the conditions upon which such mortgage was made, together with a description of the mortgaged property, and all such other particulars as may be necessary to bring all the circumstances of the case before the Court, after filing which he shall serve on the defendant, or his attorney, a ten day rule, to shew cause why such mortgaged property should not be sold, and unless cause be shewn, an order of sale shall pass accordingly.

RULE 42. Orders of sale of mortgaged property to effect a foreclosure, shall be to the following effect: "That if the defendant shall not within after this date, pay to the plaintiff the full amount of principal, interest, and costs, due him on that day, the Marshal shall proceed to sell the premises, on a credit of months; the titles to be signed, but not delivered until the money be paid according to the terms of sale; and if the amount of the purchase money be not paid when due, the Marshal shall re-sell for cash, and on account, and at the risk of the former purchaser."

MARSHAL'S SALES.

RULE 43. Sales of lands shall take place at the Court-house of the county in which the levy is made. Sales of all other kinds of property shall take place on

36. Names of jury to be sealed up. 37. Who shall be summoned as jurors.
38. On failure to obtain jury from number summoned, how to proceed.
39. Affidavit of defaulting juror. Mode of collecting fines.
40. Maximum age of persons liable to be jurors.
41. Proceedings in Foreclosure.
42. Form of order to sell mortgaged property.
43. Where property shall be sold.

the premises where the levy is made; but such sales may be made elsewhere, by consent of parties.

RUEE 44. Sales of lands by the Marshal, under execution, shall take place on the first Wednesday in every month, and after advertising three weeks in any public print of respectable circulation nearest the place of levy. The property to be sold shall be sufficiently described, and the parties, plaintiff and defendant, distinctly named.

RULE 45. Surveys of land in any quantity not exceeding two hundred acres, shall be laid down by a scale of ten chains to an inch; if exceeding that quantity, by a scale of twenty chains to an inch.

RULE 46. No survey made under a rule of Court shall be received in evidence, unless it appear that at least fifteen days' notice of the time and place of commencing such survey, was given to the opposite party by or in behalf of the party who offers it in evidence.

RULE 47. Every surveyor shall represent on his plat as nearly as he can, the different enclosures of the tenants, and extent of boundaries within which each party has exercised acts of ownership, by cultivation or otherwise.

RULE 48. All objections to the regularity or admission of surveys must be made before the jury is charged with the cause.

MOTION FOR NEW TRIAL, IN ARREST OF JUDGMENT.

RULE 49. In all cases in which a party shall receive notice of a motion for a new trial, or in arrest of judgment, he shall have leave notwithstanding to enter up his judgment and lodge his execution to bind property; but if the motion be sustained, the judgment and execution shall be wholly set aside. If either party shall die before a decision be had in the cause on such motion, his legal representative may enter himself party to the suit on motion, and be entitled to all the rights of the original party.

FINES AND FORFEITURES.

RULE 50. The Clerk shall keep a regular debit and credit account of all fines and forfeitures imposed, and money recovered on recognizances, which account shall be exhibited with his list of defaulters. and shall be annually attested.

COMMISSIONS TO EXAMINE WITNESSES.

RULE 51. Commissions for examining witnesses may be forwarded by mail, and when executed may be returned in the same mode; provided that in the latter case, the Commissioner who deposits it in the Post-office, certify the same on the envelope over the seal, and if deposited by a messenger, and the messenger

44. When property to be sold, the same to be described, and parties named.
45. Scale of surveys.
When survey may be received as evidence.
47. What surveyor must represent on plat.
48. Objection to admission of surveys.
49. Motions in arrest of judgment, or for a new trial.
50. Clerk to keep account of fines and forfeitures.
51. Commissions to examine witnesses,—May be sent by mail.—Directions concerning.

certify the delivery to the office. And if it should pass through any number of hands, successively, the same to be done by each, noting every stage of its progress, until delivered into the office.

RULE 52. The time to be allowed for the return of a commission from any part of the United States, if not exceeding one hundred miles distant, shall be one month; if at a greater distance, not exceeding five hundred miles, two months; if at greater distance three months. If from any part of the West-India Islands, three months. If from any part of Europe, six months. If from any other quarter of the globe, it must be judged of specially by the Court.

RULE 53. When a commission is returned, it may be opened by leave of the Clerk, upon consent of both parties in writing, indorsed on the commission; and after the return of a commission, it shall be the property of both parties, and remain with the Clerk, to be used by either.

RULE 54. Either party to a cause at issue, or ordered for judgment, wishing to sue out a commission to examine witnesses, shall first file a copy of the interrogatories to be propounded to the witnesses, and shall give ten days notice thereof, accompanied with a copy of such interrogtaories to the opposite party, or his attorney; and each party may name any number of Commissioners, not exceeding five, any two of whom shall be competent to examine witnesses, or any one of them; and the cross interrogatories and Commissioners in behalf of the opposite parties, shall be rendered within ten days after such notice. But on application to either of the Judges, or on motion at Rules, commissions may be sued out by plaintiff any time after filing his declaration, or by the defendant, at any time after filing his plea, though no issue be made up, and although the ten days' notice be not given, provided the same be necessary for the purposes of justice, and will expose the opposite party to no risk.

RULE 55. The defendant, with leave of the Court, may plead as many several pleas to the merits as may be necessary to his defence.

RULE 56. The defendant shall not plead specially, without the consent of the plaintiff, if by the rules of evidence, the special matter can be given in evidence on the general issue.

RULE 57. If the plaintiff amend his declaration so as substantially to change his case, or the defence, the defendant shall have the same time to plead *de novo*, as is given in the first instance.

RULE 58. The defendant shall not plead two dilatory pleas, that is; a second, after the first has been disposed of.

RULE 59. If the defendant in debt shall plead *non est factum*, or *non assumpsit*, on a bill of exchange or promissory note, without an affidavit to the truth of his plea, the instrument declared on, shall be produced by the plaintiff, but need not be proved. The execution thereof shall be considered as admitted. An executor or administrator, in such cases, may make affidavit to his belief.

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52. Time allowed for return of commission.
53. How commissions shall be opened.
54. Copy of interrogatories to be filed.
55. Number of pleas allowed.
56. Manner of pleading special matter.
57. Plaintiff amending, defendant to have time to plead *de novo*.
58. Not to put in two dilatory pleas.
59. Defendant pleading *non est factum* must file affidavit.

RULE 60 A plaintiff may have leave to strike out an issue of fact, for the purpose of filing a general demurrer, on payment of costs, and submission to such terms as will prevent delay.

RULE 61. Neither party shall, after pleading, demand the letter of attorney of the opposite party.

RULE 62. Bail may be required in any suit sounding in contract, provided an affidavit of the sum actually due be attached to the writ, and an order indorsed thereon, requiring bail to be taken. In all special cases the order of a judge shall be obtained.

RULE 63. The obligation entered into by bail, in a civil suit, shall be to surrender the principal, if in life, at any time before the bail shall become legally fixed, or made personally liable for the sum sued for in the original action.

RULE 64. Bail in civil suits shall become liable to pay the sum recovered in the original action, upon the return of *non est inventus* to a *ca. sa.*, or *nulla bona* to a *fi. fa.* against the principal. And although bail has become fixed, he may have the privilege of surrendering his principal in discharge, at any time before judgment against himself, on payment of costs and expenses.

RULE 65. A plaintiff shall not be at liberty to discontinue against the principal, and proceed against the bail, but shall proceed to judgment and execution against the principal, and may have his election to bring an action on the bail bond, or issue a *scire facias* against the bail, upon the judgment against the principal, and obtain judgment thereon against the bail.

RULE 66. Bail to the Sheriff need not enter into a recognizance of special bail, but may, of right, surrender his principal to the Sheriff, in office hours, or in open Court. And he shall also be entitled to the aid of the Marshal to retake the principal, upon a written demand to that effect left at the Marshal's office, and advancing a reasonable sum to defray all incidental expenses. He shall be entitled generally to all the privileges, rights, and powers, which may be acquired by entering into a recognizance of special bail.

RULE 67. It shall be in the power of plaintiff, whenever he has a legal right to acquire bail, to direct the Marshal to make such bail justify before the Clerk at Rules, or before some State Magistrate, and the proceedings attending such justification shall be duly returned with the writ.

RULE 68. Upon the return of an award, or umpirage, unde a rule of reference, a two day rule shall be served by either party on the other, to shew cause why it should not be affirmed by the Court, and judgment entered thereon. If no sufficient cause be shewn, the judgment shall be entered, and execution had, as in ordinary cases.

RULE 69 Prisoners shall be confined at one of the places where the Court is

60. Plaintiff may strike out issue, and file general demurrer.
61. Orders for bail must be had from Judge.
62. Bail may surrender principal before becoming liable.
63. Bail liable on return of *non est* or *nulla bona*.
64. Judgment first to be obtained against principal, before *Scire Facias* can issue against bail.
65. Bail to Sheriff may surrender in office, or open Court.
66. Marshal shall assist to retake principal, on payment of expenses.
67. Marshal to make bail justify. 68. Awards,—How confirmed.
69. Where U. S. prisoners shall be confined.
70. Writs of *Capias ad respondendum*, to be returned immediately.

held. If a debtor, he may make his election; if a criminal, the Marshal shall exercise his own discretion.

RULE 70. Whenever a defendant shall be in actual confinement, under a writ of *capias ad respondendum*, the Marshal shall make return of the writ immediately, that the defendant may sue out a rule on the plaintiff to declare in ten days after service. If the declaration be not filed within ten days, or at the next Rules, the plaintiff shall be non-prossed. But the time to declare may be extended by a Judge, or at Rules, upon cause shewn. And the same means of exterminating the suit may be pursued at every subsequent stage of the pleading.

RULE 71. When the Court is open and sitting, no rule or order shall be granted which can be obtained of course before the Clerk, unless upon special cause shewn.

RULE 72. On all rules to shew cause, the party cited shall begin and end the argument. But in all special matters, either springing out of a cause at issue, or otherwise, the actor or party submitting a point to the Court, shall be heard last; and generally the actor shall open and conclude the cause.

RULE 73. No attorney of this Court shall ever attempt to argue or explain a cause, after having been fully heard, and the opinion of the Court has been pronounced.

RULE 74. Every motion for a rule or order shall be submitted in writing, and shall be copied into the minutes from the writing submitted.

RULE 75. In actions of covenant, or on bonds, for the performance of covenant, the plaintiff may assign as many breaches as he pleases.

RULE 76. The Clerk shall issue subpœnas for all the witnesses whose names are furnished him by the District Attorney, or the defendant, to testify in criminal prosecutions.

RULE 77. Mutual existing debt in the same right or rights to recover money on contract, express or implied, may be set off against each other, upon the defendants's filing with his plea, a notice and copy thereof; and if the jury shall find a sum or balance due the defendant, he may file his declaration instanter, and take judgment for such balance.

RULE 78. In order to avoid bringing causes by management into the Courts of the United States, by creating nominal parties distinct from the parties in interest; whenever a suit is instituted to try the right to property, real or personal, and the defendant will make oath that he suspects, and has cause to suspect, that the plaintiff has accepted a conveyance of the property from the real and actual owner, for the sole purpose of bringing a suit in this Court, when the title in fee exists in some other person not entitled to sue in this Court, the defendant shall not be required to plead to the action, until the facts surmised, and stated in the defendant's affidavit, be denied on oath.

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71. Rules and orders must be obtained in course, before the Clerk.
72. Who party to have closing argument.
73. Attorneys may not explain after closing.
74. Motions must be submitted in writing.
75. Breaches of covenant; plaintiff may assign any number.
76. Clerk to issue subpœnas for witnesses.
77. Debts may be set off, and judgment entered for balance.
78. Suits not to be brought for the recovery of real or personal property, by fictitious owners.

RULE 79. In the event of the death of the plaintiff to a suit, if no executor or administrator appear to enter himself party to the suit within twelve months after a suggestion of his death be entered of record, the suit shall finally abate. And in the event of a defendant's death, if the plaintiff sue out his summons to the executor or administrator to enter himself party, and he fail to do so within twelve months after service, the plaintiff may sign his judgment against the estate.

RULE 80. In actions against two or more defendants, who must by the rules of law be jointly sued, and all of whom would be liable to be sued in this Court, if one or more of the defendants be served with legal process, the rest of the defendants may be cited to appear, by order of a Judge of this Court, provided notice of such order, setting forth the cause thereof, be published three months in any one gazette of this State, with a citation to such defendant to appear and plead to the action on or before the Rules next after the three months have expired. And if the plea be not filed accordingly, the plaintiff shall be at liberty to proceed to judgment against the defendant who has been served with the process; and if he be one of a mercantile firm, execution may be levied both on his own property, and that of the firm.

RULE 81. No writ of possession in trespass to try title shall issue without leave granted on motion in open Court.

RULE 82. The attorney on record in this Court in appeals and writs of error from the District Court, shall be allowed twenty dollars as a gross charge, and in addition thereto, fifteen cents per copy sheet of ninety words, in lieu of all other costs; the Clerk and Marshal, in such cases, shall be allowed the fees allowed by law in other cases in suits in the Common Pleas; and the fees of the Court of Admiralty, upon appeals from decisions in the Admiralty; but this shall not be held as authorizing an additional per-centage when money is paid into their hands.

RULE 83. In all cases of appeal from the District Court in Admiralty causes, the evidence must be filed with the Clerk before the appeal be docketed, and whenever the Judge's statement of the evidence is, by agreement to be received as the evidence, a consent to that effect must be indorsed thereon, before the cause be docketed in this Court.

RULE 84. In no case shall the defendant be compelled to plead or answer, until the plaintiff shall have given security for costs, if notice be given to the plaintiff's attorneys, that such security will be required; except where the party sues *in forma pauperis*.

RULE 85. In no case shall the plaintiff proceed in his suit, (after writ or process served,) until he has given security (if the same shall be demanded,) for the Marshal's and Clerk's fees; and if the security offered shall not be deemed sufficient by the said officers, the plaintiff may appeal to the Court.

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79. Suit to abate on death of plaintiff, after twelve months; same as to defendant, unless the summons be served on administrator.
80. Mode of action where two or more defendants are joined.—How execution to be levied.
81. Writs of possession in trespass to try title, only given on motion in open Court.
82. Fees of attorneys on appeal, also of Clerk, and Marshal.
83. Evidence to be filed before appeal be docketed.
84. Defendant not compelled to plead till plaintiff gives security.
85. Plaintiff to give receipts for Clerk's and Marshal's fees.

RULE 86. Attorneys who have been admitted into the Supreme Court, or any one of the Circuit Courts of the United States, and those who have been admitted in the State Court, and practised therein for three years, or who having been admitted to the State Courts shall be found qualified, on examination, shall be admitted to practise in this Court.

RULE 87. Only two counsel on each side shall be heard in any cause. One for the promovent shall be first heard, the two for the respondent shall follow, and one for the promovent close in argument.

RULE 88. On points of law, gentlemen of the bar shall address themselves exclusively to the Court.

RULE 89. Before the writ *de homine replegiando* do issue, an affidavit shall be filed with the Clerk, stating the plaintiff's claim to his freedom, and his right to sue in this Court; the amount of bail to be given shall be indorsed on the writ by a Judge of this Court, or by the Clerk at Rules.

RULE 90. In all causes wherein no particular rules are herein set down, the practice of the Court of Common Pleas at Westminster, shall be pursued, so far as the same be not repugnant to the above Rules, or the laws of the State.

I, HENRY Y. GRAY, Clerk of the Circuit Court of the United States, for the Sixth Circuit, South Carolina District, do hereby certify, that the foregoing Rules are the Rules regulating the practice of the said Court, in suits at Common Law.

Given under my hand and seal, at office, in the City of Charleston, District aforesaid, this first day of November, A. D. one thousand eight hundred and forty-two.

H. Y. GRAY, *Clerk Circuit Court.*

86. Admission of Attorneys.
87. Number of counsel to be heard.
88. Argument on law points, how addressed.
89. Affidavit to be filed and bail given before certain writs shall issue.
90. Practice in special cases, how governed.

RULES

OF PRACTICE

OF THE

COURTS OF THE UNITED STATES,

IN CAUSES OF

ADMIRALTY, AND MARITIME JURISDICTION.

RULE 1. No mesne process shall issue from the District Court in any civil cause of Admiralty and Maritime Jurisdiction, until the libel or libels of information shall be filed in the Clerk's office, from which such process is to issue. All process shall be served by the Marshal or his deputy, or where he or they are interested, by some discreet and disinterested person appointed by the Court.

RULE 2. In suits in personam, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a capias, or by a warrant of arrest of the person of the defendant with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for, or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or, by a simple monition in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information pray for, or elect.

RULE 3. In all suits in personam—where a simple warrant of arrest issues and is executed, the Marshal may take bail with sufficient sureties from the party arrested by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the Court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered there in the Court, to which the proc-

1. Process shall not issue till libel is filed in the Clerk's office.
2. Libellant may elect whether to arrest person, or attach goods or credits.
3. On simple warrant of arrest, Marshal may take bail, and upon such bond summary execution may issue.

ress is returnable, or in any appellate Court. And upon such bond or stipulation, summary process of execution may and shall be issued against the principal and sureties, by the Court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate Court.

RULE 4. In all suits in personam, where goods and chattels, or credits and effects are attached, under such warrant authorizing the same, the attachment may be dissolved by order of the Court to which the same warrant is returnable, upon the defendant, whose property is attached, giving a bond or stipulation with sufficient sureties to abide by all orders, interlocutory or final, of the Court, and pay the amount awarded by the final decree rendered in the Court to which the process is returnable, or in any appellate Court; and upon such bond or stipulation, summary process of execution, shall and may be issued against the principal and sureties, by the Court to which such warrant is returnable, to enforce the final decree so rendered, upon appeal, by the appellate Court.

RULE 5. Bonds or stipulations in Admiralty suits may be given and taken in open Court, or at Chambers, or before any Commissioner of the Court, who is authorized by the Court to take affidavits of bail, and depositions in cases pending before the Court.

RULE 6. In all suits in personam, where bail is taken, the Court may, upon motion for due cause shewn, reduce the amount of the sum contained in the bond or stipulation therefor: and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the Court, to be given, upon motion, and due proof thereof.

RULE 7. In suits in personam, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the Court upon affidavit or other proper proof shewing the propriety thereof.

RULE 8. In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such are in the possession or custody of any third person, the Court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the Marshal or other proper officer, if upon the hearing the same is required by law and justice.

RULE 9. In all cases of seizure, and in other suits and proceedings in rem, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested, and the Marshal shall thereupon arrest and take the ship, goods, or other thing, into his possession for safe custody; and shall cause public notice thereof, and of the time assigned for the return of such process, and the hearing of the cause, to be given in such newspaper within the district as the District Court shall order, and if there is no newspaper published therein, then in such public places in the district as the Court shall direct.

4. How attachments may be dissolved.
5. Bonds in Admiralty suits may be taken in Court, at chambers, or before Commissioner.
6. Amount of bail may be reduced for cause shown.
7. Warrants of arrest not to be granted in suits for sums exceeding $500.
8. In suits in rem against a ship, her tackle, &c., held by a third person, the Court may order the same into the custody of the Marshal.
9. Manner of proceeding in suits in rem.

RULE 10. In all cases where any goods or other things are arrested, if the the same are perishable, or liable to deter oration, decay or injury, by being detained in custody, pending the suit, the Court may, upon the application of either party, in its discretion, order the same, or so much thereof to be sold, as shall be perishable, or liable to depreciation, decay or injury, and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into Court, to abide the event of the suit: or the Court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation with sureties in such sum as the Court shall direct, to abide by and pay the money awarded by the final decree rendered by the Court, or the appellate Court, if any appeal intervenes, as the one or the other course shall be ordered by the Court.

RULE 11. In like manner, where any ship shall be arrested, the same may upon the application of the claimant, be delivered to him upon due appraisement to be had under the direction of the Court, upon the claimant's depositing in Court so much money as the Court shall order, or upon his giving a stipulation with sureties as aforesaid; and if the claimant shall decline any such application, then the Court may, in its discretion, upon the application of either party, upon due cause shewn, order the sale of such ship, and the proceeds thereof to be brought into Court, or otherwise disposed of, as it may be deemed most for the benefit of all concerned.

RULE 12. In all suits by material men, for new supplies or repairs, or other necessaries for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight in rem, or against the master or owner alone in personam: and the like proceeding in rem, shall apply to cases of domestic ships, where by the local law a lien is given to material men for supplies, repairs, or other necessaries.

RULE 13. In all suits for mariners' wages, the libellant may proceed against the ship, freight and master, or against the ship and freight, or against the owner or master alone, in personam.

RULE 14. In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship alone, or against the master, or the owner alone, in personam.

RULE 15. In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master, or the owner alone, in personam.

RULE 16. In all suits for an assault or beating on the high seas, or elsewhere, within the admiralty and maritime jurisdiction, the suit shall be in personam only.

RULE 17. In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master for moneys taken

10. Proceedings in cases of arrest, where goods are perishable.
11. Where ship is arrested, claimant may recover same on depositing value in Court.
12. Regarding suits for supplies furnished, or repairs made.
13. Proceedings to recover mariners wages.
14. Suits for Pilotage.
15. Suits for damages by collision.
16. Suits for assault upon the high seas.
17. Suits where libellant may elect how to proceed.

up in foreign port for supplies or repairs, or other necessaries for the voyage, without any claim of marine interest, the libellant may proceed either in rem, or against the master, or the owner alone, in personam.

RULE 18. In all suits on bottomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property in whosoever hands it may be found unless the master has, without authority, given the bottomry bond, or by fraud or misconduct has avoided the same, or has substracted the property, or unless the owner has, by his own misconduct or wrong, lost or substracted the property, in which latter cases the suit may be in personam against the wrong-doer.

RULE 19. In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed.

RULE 20. In all petitory or possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

RULE 21. In all cases where the decree is for the payment of money, the libellant may, at his election, have an attachment to compel the defendant to perform the decree, or a writ of execution in the nature of a *capias* and of a *fieri facias*, commanding the Marshal or his deputy to levy the amount thereof of the goods and chattels of the defendant, and for want thereof to arrest his body, to answer the exigency of the execution. In all other cases, the decree may be enforced by an attachment to compel the defendant to perform the decree ; and upon such attachment the defendant may be arrested and committed to prison until he performs the decree, or is otherwise discharged by law, or by the order of the Court.

RULE 22. All informations and libels of infirmation upon seizing for any breach of the revenue or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States; and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the forms of the statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer for due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return day of the process, why the forfeiture should not be decreed.

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18. Suits on bottomry bonds.
19. Suits for salvage.
20. Suits between part owners, regarding possession of ship.
21. Manner of enforcing money decrees.
22. Manner of drawing libels of information.

Rules in U. S. Courts, in causes of Admiralty, and Maratime Jurisdiction.

RULE 23. All libels in instance causes, civil or maritime, shall state the nature of the cause, as for example, that it is a cause civil or maritime, of contract, or of tort or damage, or of salvage, or of possession or otherwise, as the case may be, and if the libel be in rem, that the property is within the district; and if in personam, the names, the occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of facts, upon which the libellent relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of the process in rem, or in personam, (as the case may require,) and for such relief and redress as the Court is competent to gve in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel, at the close or conclusion thereof.

RULE 24. In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made, at any time, upon motion to the Court, as of course. And new counts may be filed, and amendments in matters of substance may be made upon motion at any time before the final decree, upon such terms as the Court shall impose. And where any defect of form is set down by the defendnat upon special exceptions, and is allowed, the Court may, in granting leave to amend, impose terms upon the libellant.

RULE 25. In all cases of libel in personam, the Court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation with sureties in such sum as the Court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in process of the suit.

RULE 26. In suits in rem, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant, by whom or on whose behalf the claim is made, is the true and *bona fide* owner, and that no other person is the owner thereof. And where such claim is put in by an agent or consignee, he shall also make oath, that he is duly authorized thereto by the owner, or if the property be at the time of the arrest in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation with sureties in such sum as the Court shall direct, for the payment of all costs and expenses which shall be awarded apainst him, by the final decree of the Court, or upon an appeal, by the appellate Court.

RULE 27. In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answer of the defendant to the allegation in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separte article and separate allegation in the libel, in the same order as numbered in the libel; and shall also answer in like manner each interrogatory propounded at the close of the libel.

23. Libels to state distinctly each alleged cause for proceeding, and end with prayer, &c..
24. Informations, and libels.—how amended.
25. Where no attachment is made, defendant shall give security.
26. Party or agent claiming property, to make oath to claim.
27. Answer of defendant must be sworn to.

RULE 28. The libellant may except to the sufficiency or falness, or distinctness or relevancy of the answer to the articles and interogatories in the libel; and if the Court shall adjudge the same exceptions, or any of them to be good and valid, the Court shall order the defendant forthwith, within such time as the Court shall direct, to answer the same, and may further order the defendant to pay such costs as the Court shall adjudge reasonable.

RULE 29. If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the Court, the Court shall pronounce him to be in contumacy and default, and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the Court shall proceed to hear the cause *ex parte*, and judge therein as to law and justice shall appertain; but the Court may, in its discretion, set aside the default, and upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

RULE 30. In all cases where the defendant answers, but does not answer fully and explicitly, and distinctly, to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the Court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

RULE 31. The defendant may object by his answer to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or for any forfeiture of his property for any penal offence.

RULE 32. The defendant shall have a right to require the personal answer of the libellant upon his oath or solemn affirmation, to any interrogatories which he may at the close of his answer propound to the libellant, touching any matters charged in the libel, or touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution or punishment or forfeiture, as is provided in the 31st Rule. In default of due answer by the libellant to such interrogatories, the Court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the Court, in its discretion, shall deem most fit to promote public justice.

RULE 33. Where either the libellant or the defendant is out of the country, or unable from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation, at the proper time, the Court may, in its discretion, in furtherance of the due administration of justice dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

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28. Libellant may except to answer.
29. When bill may be adjudged to be taken *pro confesso*.
30. Court may compel defendant to make further answer.
31. Defendant not compelled to criminate himself, by his answer to allegations.
32. Defendant may require libellant to answer interrogatories upon oath.
33. In absence of either party, Court may award a commission, to take answer.

RULE 34. If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem, for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the Court, the other party or parties in the suit may be required, by order of the Court, to make due answer; and such further other proceedings shall be had, and decree rendered by the Court therein, as to law and justice shall appertain. But every such intervener shall be required upon filing his allegations to give a stipulation with sureties to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the Court upon the final decree, whether it is rendered in the original or appellate Court.

RULE 35. Stipulations in admiralty and maritime suits may be taken in open Court, or by the proper Judge at Chambers, or under his order, by any Commssioner of the Court, who is a standing Commissioner of the Court, and is now by law authorized to take affidavits of bail, and and also depositions in civil causes pending in the Courts of the United States.

RULE 36. Exception may be taken to any libel, allegation or answer for surplussage, irrelevancy, impertinence, or scandal, and, if upon reference to a matter, the exception shall be reported to be so objectionable, and allowed by the Court, the matter shall be expunged at the cost and expense of the party in whose libel or answer the same is found.

RULE 37. In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation, as to debts, credits or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the Court may award compulsory process in personam against him. If he admits any debts, credits or effects, the same shall be held in his hands liable to answer the exigency of the suit.

RULE 38. In cases of mariners' wages, or bottomry, or salvage, or other proceedings in rem, where freight, or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the Court may, upon due application by petition of the party interested, require the party charged with the possession thereof to appear and shew cause, why the same should not be brought into Court to answer the exigency of the suit; and if no sufficient cause be shewn, the Court may order the same to be brought into Court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment or other compulsory process to compel obedience thereto.

RULE 39. If in any admiralty suit, the libellant shall not appear and prosecute his suit according to the course and orders of the Court, he shall be deemed in default and contumacy, and the Court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

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34. Regarding the intervention of a third person.
35. Stipulations may be taken in open Court, at Chambers, or before a Commissioner.
36. Exceptions to a libel, or answer, how disposed of.
37. In cases of foreign attachment, garnishee shall make oath as to property in his hands.
38. In suits for mariners' wages, &c., the party holding property of defendants, may be compelled to bring it into Court.
39. Libellant failing to appear and prosecute, shall be deemed in default.

RULE 40. The Court may, in its discretion, upon the motion of the defendant and payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a re-hearing thereof, at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the Court may direct.

RULE 41. All sales of property under any decree in admiralty, shall be made by the Marshal or his deputy, or other proper officer assgned by the Court, where the Marshal is a party in interest, in pursuance of the orders of the Court, and the proceeds thereof, when sold, shall be forthwith paid into the registry of the Court by the officer making the sale, to be disposed of by the Court according to law.

RULE 42. All moneys paid into the registry of the Court, shall be deposited in some bank designated by the Court, and shall be so deposited in the name of the Court, and shall not be drawn out except by a check or checks signed by a Judge of the Court, and countersigned by the Clerk, stating on whose account and for whose use it is drawn, and in what suit, and out of what fund in particular it is paid. The Clerk shall keep a regular book containing a memorandum and copy of all the checks so drawn and the date thereof.

RULE 43. Any person having an interest in any proceeds in the registry of the Court, shall have a right by petition and summary proceeding to intervene *per interesse suo*, for a delivery thereof to him; and upon due notice to the adverse parties, if any, the Court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice: and if such petition or claim shall be deserted, or upon a hearing be dismissed, the Court may, in its discretion, award costs against the petitioner in favor of the adverse party.

RULE 44. In cases where the Court shall deem it expedient or necessary, for the purpose of justice, the Court may refer matters arising in the progress of the suit, to one or more Commissioners to be appointed by the Court, to hear the parties and make report therein. And such Commissioner or Commissioners, shall have and possess all the powers in the premises, which are usually given to, or exercised by Masters in Chancery, in references to them, including the power to administer oaths to, and examine the parties and witnesses touching the premises.

RULE 45. All appeals from the District to the Circuit Court, must be made while the Court is sitting, or within such other period as shall be designated by the District Court by its general Rules, or by an order specially made in the particular suit.

RULE 46. In all cases not provided for in the foregoing Rules, the District and Circuit Courts are to regulate the practice of the said Courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

These Rules shall be in force in the Circuit and District Courts of the United States, from after the first day of September next.

It is ordered by the Court, that the foregoing Rules be, and they are adopted and promulgated as Rules for the regulation and government of the Circuit Courts

40. Defendant may move to rescind decree in certain cases.
41. Marshal to sell property in Admiralty causes.
42. How money realized to be disposed of.
43. How party interested may secure his share of proceeds.
44. Matters brought into Court, may be referred to Commissioners.
45. Appeals from District to Circuit Court, when to be made.
46. Proceedings in cases not herein provided for.

and District Courts of the United States, in suits in admiralty on the instance side of the Courts.

SUPREME COURT UNITED STATES,
December Term, 1844.

ADDITIONAL RULES IN COURTS OF ADMIRALTY, ADOPTED SINCE 1844.

RULE 47. In all suits in personam where a simple warrant of arrest issues and is executed, bail shall be taken by the Marshal and the Court in those cases only in which it is required by the laws of the State where an arrest is made, upon similar or analogous process issuing from State Courts. And imprisonment for debt, on process issuing out of the admiralty Court, is abolished in all cases, where by the laws of the State in which the Court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State Court.

RULE 48. The 27st Rule shall not apply to cases where the sum of value in dispute does not exceed fifty dollars, inclusive of costs, unless the proceedings prescribed by that rule are necessary for the purposes of justice, in the case before the Court. All rules and parts of rules heretofore adopted inconsistant with this order are hereby repealed and annulled.

RULE 49. Further proof taken in a Circuit Court upon an admiralty appeal, shall be by deposition taken before some Commissioner, appointed by a Circuit Court Judge, pursuant to the Acts of Congress in that behalf, or before some officer authorized to take depositions by the 30th Section of the Act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination unless the Court in which such appeal shall be pending, or one of the Judges thereof, shall upon motion allow a Commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the Magistrate before whom it is to be taken, or from the Clerk of the Court in which such appeal be pending, to the adverse party to be present at the taking of the same, and to put interrogatories if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles travel: Provided that the Court in which such appeal may be pending, or either of the Judges thereof, may upon motion, increase or diminish the length of notice above required.

RULE 50. When oral evidence shall be taken down by the Clerk of the District Court, pursuant to the above mentioned Section of the Act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses or either of them if he should so elect.

RULE 51. When the defendant in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed, as shall be fixed by the District Court, either by general rule or by special order, the libellant may

47. Bail to be taken by Court, or Marshal, in accordance with State laws. Imprisonment for debt, in Admiralty cases abolished, wherever State laws will permit.

48. Parts of certain previous Rules repealed and annulled.

49. Manner of taking proof in appeal cases in Admiralty; to be before a Commission.

50. Evidence taken by Clerk in District Court, may be used in Circuit Court, on appeal.

51. No replications, general or special, to be allowed.

amend his libel so as to confess and avoid, or explain or add to the new matters set forth in the answer; and within such time as may be fixed in like manner, the defendant shall answer such amendments.

RULE 52. The Clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts on appeals, so that the same shall contain the following:

1. The style of the Court.

2. The names of the parties, setting forth the original parties, and those who have become parties before the Appeal, if any change has taken place.

3. If bail was taken or property was attached or arrested the process of arrest or attachment and the service thereof, all bail and stipulations, and if any sale has been made, the orders, warrants and reports relating thereto.

4. The libel, with exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libellant; and any exhibits not annexed to the libel.

7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.

8. Any order of the Court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of Court respecting the same and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the District Court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules and orders not excepted to, which are merely preparatory for trial.

3. The Commissions to take depositions, notices therefor, their captions and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witnesses, and to copy the interrogatories and answers, and to state the name of the Commissioner, and the place where and the date when the deposition was sworn to; and in copying the depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The Clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document at the end thereof, under the Seal of the Court, to be a transcript of the record of the District Court in the cause named, at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

RULE 53. Whenever a cross-libel is filed upon any counter claim arising out of the same cause of action for which the original libel was filed, the defendants in the cross-libel shall give security in the equal amount and form to respond in damages, as claimed in said cross libel, unless the Court on cause shown shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

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52. What the record sent up from District to Circuit Court on appeal, shall contain.

53. Respondents in a cross libel to give security for costs and damages.

RULES

OF THE

COURT OF EQUITY OF THE UNITED STATES,

PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES, JANUARY TERM, 1842: NOW OF FORCE.

PRELIMINARY REGULATIONS.

RULE 1. The Circuit Courts, as Courts of Equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

RULE 2. The Clerk's office shall be open, and the Clerk shall be in attendance therein on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are granted of course and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

RULE 3. Any Judge of the Circuit Court, as well in vacation as in term, may at Chambers, or on rule days, at the Clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner, and with the same effect, as the Circuit Court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and shew cause to the contrary at the next rule day thereafter, unless some other time is assigned by the Judge for the hearing.

RULE 4. All motions, rules, orders, and other proceedings, made and directed at Chambers, or on rule days at the Clerk's office, whether special or of course, shall be entered by the Clerk in an order book, to be kept at the Clerk's office, on the day when they are made and directed—which book shall be open for inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the

1. Circuit Courts as Courts of Equity, always open for business.
2. Rules in Clerk's office on first Monday in every month.
3. Judges, at Chambers, or Clerk's office, may make orders or rules, on due notice to parties.
4. Orders, rules, &c., to be entered in Clerk's order book, which shall be open for inspection of all parties interested. Entries in order book to be deemed a notice to parties.

order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all rules, acts, notices, and other procedings, entered in such order book, touching any and all the matters in the suits, to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear, and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the Judges of the Circuit Court may, by rule, abridge the time for notice of rules, orders, or other proceedings, not requiring personal service on the parties, in their discretion.

RULE 5. All motions and applications in the Clerk's office, for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions, and for other proceedings in the Clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or order of the Court, or of any Judge thereof, shall be deemed motions and applications, grantable, of course, by the Clerk of the Court. But the same may be suspended, or altered, or rescinded by any Judge of the Court upon a special cause shewn.

RULE 6. All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall unless a different time be assigned by a Judge of the Court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not shew good cause against the same, the motion may be heard by any Judge of the Court *ex parte*, and granted, as if not objected to or refused, in his discretion.

PROCESS.

RULE 7. The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the Circuit Court, a writ of attachment, and if the defendant cannot be found, a writ of sequestration, or a writ of assistance, to enforce a delivery of possession, as the case may require, shall be the proper process to issue, for the purpose of compelling obedience to any interlocutory or final order or decree of the Court.

RULE 8. Final process to execute any decree, may, if the decree be solely for the payment of money, be by writ of execution, in the form used in the Circuit Court in suits at common law, in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land, or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the acts shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the Clerk's office, that the same has not been complied with within the prescribed time, the Clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or up-

5. Motions or orders granted in course by Clerks may be rescinded by a Judge.
6. Motions for orders to be made and entered on a rule day, and heard on next rules day.
7. Writ of subpœna to be the first process in suits in Equity.
8. Final process to be by writ of execution.

on a special order of the Court, or a Judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

RULE 9. When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree, or order, the party prosecuting the same shall be entitled to a writ of assistance from the Clerk of the Court.

RULE 10. Every person not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process, as if he were a party in the cause; and every person, not being a party in any cause, against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order, as if he were a party in the cause.

SERVICE OF PROCESS.

RULE 11. No process of subpœna shall issue from the Clerk's office in any suit in equity, until the bill is filed in the office.

RULE 12. Whenever a bill is filed, the Clerk shall issue the the process of subpœna therein, as of course, upon the application of the plaintiff, which shall be returnable into the Clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpœna shall be placed a memoradum, that the defendant is to enter his appearance in the suit in the Clerk's office, on or before the day, at which the writ is returnable; otherwise, the bill may be taken *pro confesso*. When there are more than one defendants, a writ of subpœna may, at the election of the plaintiff be sued out separately for each defendant, except in the case of husband and wife, defendants, or a joint subpœna against all the defendants.

RULE 13. The service of all subpœnas shall be by a delivery of a copy thereof by the officer serving the same, to the defendant personally, or in case of husband and wife, to the husband personally, or by leaving copy thereof at the dwelling house or usual place of abode of each defendant, with some person, who is a member or resident of the family.

RULE 14. Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpœna, *toties quoties*, against such defendant, if he shall require it, until due service is made.

RULE 15. The service of all process, mesne and final, shall be by the Marshal of the district, or his deputy, or by some other person specially appointed by the Court for that purpose, and not otherwise; in the latter case, the person serving the process shall make affidavit thereof.

RULE 16. Upon the return of the subpœna, as served and executed upon any defendant, the Clerk shall enter the suit upon his docket as pending in the Court, and shall state the time of the entry.

9. Writ of assistance to enforce decree, or order for delivery of possession.
10. Person not party to a cause, may obtain order of enforcement.
11. Subpœna not to issue till bill be filed.
12. Bill being filed, the Clerk will thereupon issue subpœnas.
13. What shall constitute service of subpœna.
14. Subpœna returned not executed,—What then.
15. Who shall serve all processes. 16. When Clerk to docket cause.

APPEARANCE.

RULE 17. The appearance day of the defendant shall be the rule day, to which the subpœna is made returnable; provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day, when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the Clerk.

BILLS TAKEN PRO CONFESSO.

RULE 18. It shall be the duty of the defendant, unless time be otherwise enlarged, for cause shewn, by a Judge of the Court upon motion for that purpose, to file his plea, demurrer or answer to the bill in the Clerk's office, on the rule day next succeeding that of entering his appearance, in default thereof, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken *pro confesso*; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the Court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to a process of attachment against the defendant, to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom, unless, upon filing his answer, or otherwise complying with such order, as the Court or a Judge thereof may direct, as to pleading to, or fully answering the bill, within a period to be fixed by the Court or Judge, and undertaking to speed the cause.

RULE 19. When the bill is taken *pro confesso*, the Court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute, unless the Court shall at the same term set aside the same, or enlarge the time for filing the answer, upon cause shewn upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the Court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the Court shall direct, and submit to such other terms as the Court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

RULE 20. Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the Judges of the Circuit Court of the United States, for the District of———. A. B, of———; and a citizen of the State of———, brings this, his bill, against C. D., of———, and a citizen of the State of———, and E. F., of———, and a citizen of the State of———. And thereupon your orator complains and says, that, &c."

RULE 21. The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters

17. Appearance day.
18. When bill may be taken *pro confesso*.
19. When decree may be rendered, and made absolute.
20. Manner of drawing bills of complaint.
21. What shall constitute prayer of bill, and what plaintiff may omit.

or excuses, which the defendant is supposed to intend to set up by way of defence to the bill; also, what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating parting of his bill, state and avoid, by counter-averments, at his option, any matter or thing, which he supposes will be insisted upon by the defendants, by way of defence or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief, to which the plaintiff considers himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is required, it shall also be specially asked for.

RULE 22. If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason, why they are not made parties, by shewing them to be without the jurisdiction of the Court as to the other parties. And as to persons who are without the jurisdiction, and may properly be made parties, the bill may pray, that process may issue to make them parties to the bill, if they should come within the jurisdiction.

RULE 23. The prayer for process of subpœna in the bill shall contain the names of the defendants, named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the Court may take order thereon, as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

RULE 24. Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him, and the case laid before him, there is ground for the suit, in the manner in which it is framed.

RULE 25. In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which it allowed in the State Court of Chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

RULE 26. Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recital of deeds, documents, contracts, or other instruments, in *hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a Master, by any Judge of the Court for impertinence, or scandal, and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the Court or a Judge thereof shall otherwise order. If the Master shall re-

22. Reasons to be given if certain parties are not named as defendants.
23. Prayer for subpœna to name all defendants, whether infant or otherwise.
24. Solicitor to affix his signature to bill. 25. Amount of costs taxable.
26. Impertinent and irrelevant matter not to appear in bills.

port, that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the referee.

RULE 27. No order shall be made by any Judge for refering any bill, answer, or pleading, or other matter, or proceeding, depending before the Court for scandal or impertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages, which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day, after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the Master to examine and report for the same, on or before the next succeeding rule day, or the Master shall certify, that further time is necessary for him to complete the examination.

AMENDMENTS OF BILLS.

RULE 28. The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the Clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, mis-description of premises, clerical errors, and generally in matters of form. But if he amend in a material point, (as he may do of course,) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner to the defendant a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

RULE 29. After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any Judge of the Court to amend his bill on or before the next succeeding rule day, upon payment of costs, or without payment of costs, as the Court or the Judge thereof may, in his discretion, direct. But after replication filed, the plaintiff shall not be permitted to withdraw it, and to amend his bill, except upon a special order of a Judge of the Court, upon motion or petition, after due notice to the other party, and upon proof by affidavit, that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the Judge for speeding the cause.

RULE 30. If the plaintiff, so obtaining an order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the Clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

RULE 31. No demurrer or plea shall be allowed to be filed to any bill, unless

27. Exceptions to form of bill to be in writing, and signed by counsel.

28. How bills may be amended. Copy as amended to be furnished to defendant.

29. After answer and replication, no amendment allowed except on special order.

30. Amended bill not filed before next rule day to be considered abandoned.

upon a certificate of counsel, that in his opinion, it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and if a plea, that it is true in point of fact.

RULE 32. The defendant may, at any time before the bill is taken for confessed, or afterwards, with the leave of the Court, demur or plead to the whole bill, or part of it, and he may demur to part, plead to part, and answer to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer, fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

RULE 33. The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him, as far as in law and equity they ought to avail him.

RULE 34. If upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the Court shall be satisfied that the defendant had good ground in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as consistantly with justice and the rights of the defendant, the same can in the judgment of the Court, be reasonably done; in default whereof, the bill shall be taken against him, *pro confesso*, and the matter therein be proceeded in, and decreed accordingly.

RULE 35. If upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the Court may, in its discretion upon the motion of the plaintiff, allow him to amend his bill, upon such terms, as it shall deem reasonable.

RULE 36. No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

RULE 37. No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter, as may be covered by such demurrer or plea.

RULE 38. If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day, when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a Judge of the Court shall allow him further time for the purpose.

RULE 39. The rule, that if a defendant submits to answer, he shall answer fully to all the matters of the bill, shall no longer apply, in cases where he might, by plea, protect himself from such answer and discovery. And the defendant shall be entitled, in all cases by answer, to insist upon all matters of defence, (not

31. Demurrer or plea to be supported by affidavit of defendant.
32. Defendant may demur to part, plead to part, and answer to the residue.
33. Plaintiff may argue the demurrer, or join issue on the plea.
34. If demurrer or plea be overruled, plaintiff may have his costs.
35. Defendant entitled to costs when demurrer or plea are allowed.
36. Demurrer or plea not held bad, because only part of bill answered.
38. Bill dismissed of course on plaintiff's failure to reply.

being matters of abatement, or to the character of the parties or matters of form, in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matter that he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defence. Thus, for example, a *bona fide* purchaser, for a valuable consideration, without notice, may set up that defence by way of answer, instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title, than he would be in any answer in support of such plea.

RULE 40. A defendant shall not bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories, which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

RULE 41. The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c.; and the interrogatories, which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form, or to the effect following: that is to say,—"The defendant (A. B.) is required to answer the interrogatries numbered respectively 1, 2, &c.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those, which such defendant is required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

RULE 42. The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in, or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

RULE 43. Instead of the words of the bill now in use, preceding the interogating part thereof, and beginning with the words. "To the end, thereof," there shall hereafter be used words in the form, or to the effect following; To the end, therefore, that the said defendants may, if they can, shew why your orator should not have the relief hereby prayed, and may, upon their several and respective corporate oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer: that is to say:—

"1. Whether, &c. 2. Whether, &c."

RULE 44. A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, not-

39. Pleas in bar.
40. Defendant not bound to answer statements.
41. Interrogatories in bills to be numbered.
42. Notes and additions to bills to be treated as amendments.
43. Amended form of bills, &c.
44. Defendant in his answer may decline to answer interrogatories of bill.

withstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

RULE 45. No special replication to any answer shall be filed; but if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without the payment of costs, as the Court, or a Judge thereof, may, in his discretion, direct.

RULE 46. In every case, where an amendment shall be made after answer is filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule day after that on which the amendment or amended bill is filed, unless the time therefor shall be enlarged, or otherwise ordered by a Judge of the Court; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

RULE 47. In all cases where it shall appear to the Court, that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the Court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the Court as to the parties before the Court, the Court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

RULE 48. Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the Court, in its discretion, may dispense with making them all parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

RULE 49. In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors and administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

RULE 50. In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party, where he desires to have the will established against him.

RULE 51. In all cases in which the plaintiff has a joint and several demand, against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the per-

45. No special replication to be filed
46. Defendant may make new or supplemental answer to amendments filed.
47. Relating to the various parties to suits.
48. Where parties are numerous, a cause may proceed in the absence of part, if all the adverse interests be represented.
49. Trustees may represent interested parties in suits relating to real estate.
50. Relating to suits to execute the trusts of a will.

sons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

RULE 52. Where the defendant shall, by his answer, suggest, that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down, shall be notified by an entry, to be made in the Clerk's order book, in the form, or to the effect, following; that is to say; "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties. But the Court, if it thinks fit, shall be at liberty to dismiss the bill.

RULE 53. If a defendant shall, at the hearing of a cause, object, that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified, by name or description, the parties to whom the objection applies, the Court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

RULE 54. Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party upon service of the subpœna upon him, need not appear and answer the bill unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of the proceedings against him, unless the Court shall otherwise direct.

RULE 55. Whenever any injunction is asked for by the bill, to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same, within the time prescribed therefor by these rules, the plaintiff shall be entitled, as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the Court in term, or by a Judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction, or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the Judge granting the same, continue until the next term of the Court, or until it is dissolved by some other order of the Court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

RULE 56. Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by proper parties entitled to revive the same; which bill may be filed

51. Plaintiff having demands against several, may proceed against one or more.
52. Suggestion of defect in bill, may be argued.
53. Court may by decree, save the rights of absent parties.
54. When defendant may elect to appear, or otherwise.
55. Injunction granted as a matter of course.—When special injunctions.

in the Clerk's office at any time; and upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the Clerk, requiring the proper representatives of the other party to appear and shew cause, if any they have, why the cause should not be revived. And if no cause shall be shewn at the next rule day, which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

RULE 57. Whenever any suit in equity shall become defective, from any event, happening after the filing of the bill, (as for example, by a change of interest in the parties,) or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any Judge of the Court on any rule day, upon proper cause shewn, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the Clerk's office, unless some other time shall be assigned by a Judge of the Court.

RULE 58. It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case require it.

ANSWERS.

RULE 59. Every defendant may swear to his answer before any Justice or Judge of any Court of the United States, or before any Commissioner appointed by the Circuit Court to take testimony or depositions, or before any Master in Chancery appointed by any Circuit Court, or before any Judge of any Court of a State or Territory.

AMENDMENT OF ANSWER.

RULE 60. After an answer is put in, it may be amended, as of course, in any matter of form, by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon a bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the Court, or of a Judge thereof, upon motion and cause shewn, after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the Court or the Judge granting the same, may in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

RULE 61. After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the Clerk's office, exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shewn to the Court or a Judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

56. How suits abated may be revived.
57. Leave to file supplemental bills,—how obtained.
58. Supplemental bill or bill of revivor, need not contain statement of original suit.
59. Affidavit of defendant to answer,—before whom made.
60. Amendment of answers,—when and how made.
61. Exceptions to answers,—when filed.

RULE 62. When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such seprarte answers or other proceedings, unless a Master, upon reference to him, shall certify, that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

RULE 63. Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to these rules, and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a Judge of the Court; and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be sufficient: provided, however, that the Court, or any Judge thereof, may, for good cause shewn, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

RULE 64. If at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto, on the next succeeding rule day; otherwise the plaintiff shall as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or at his election may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant when he is in custody upon such writ, shall not be discharged therefrom, but by an order of the Court, or of a Judge thereof, upon his putting in such answer and complying with such other terms, as the Court or Judge may direct.

RULE 65. If, upon argument, the plaintiff's exceptions to the answer be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all costs occasioned thereby, unless otherwise directed by the Court, or the Judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

RULE 66. Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto, on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the Court or a Judge thereof shall, upon motion for cause shewn, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY, HOW TAKEN.

RULE 67. After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party, taking out the same, in the Clerk's

62. What costs allowed to defendants Solicitor.
63. 64. 65. Procee lings in relation to the filing of exceptions.
66. When replication shall be filed, and issue made up. On failure to file, suit to be dismissed.
67. Commissions to take testimony to issue in vacation, as well as in term time.

office, ten days' notice thereof being given to the adverse party to file cross interrogatories before the issuing of the commission; and if no cross interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the Commissioner or Commissioners shall be named by the Court, or by a Judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties, or their agents, without filing any written interrogatories.

RULE 68. Testimony may also be taken in the cause, after it is at issue, by deposition, according to the Acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission, or by a new deposition taken under the Acts of Congress, if a Court, or a Judge thereof, shall, under all the circumstances, deem it reasonable.

RULE 69. Three months, and no more, shall be allowed for the taking of testimony after the case is at issue, unless the Court, or a Judge thereof, shall, upon special cause shown to either party, enlarge the time: and no testimony taken after such period, shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony, into the Clerk's office, publication thereof may be ordered in the Clerk's office by any Judge of the Court, upon due notice to the parties, or it may be enlarged as he may deem reasonable, under all the circumstances. But by consent of the parties, publication of the testimony may, at any time, pass in the Clerk's office, such consent being in writing, and a copy thereof entered in the order book, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

RULE 70. After any bill filed, and before the defendant has answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any of them is a single witness to a material fact, the Clerk of the Court shall, as of course, upon the application of the plaintiff, issue a commission to such Commissioner or Commissioners, as a Judge of the Court may direct, to take the examination of such witness or witnesses, *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

RULE 71. The last interrogatory in the written interrogatories to take testimony now commonly in use, shall, in the future, be altered, and stated in substance, thus:—"Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS BILL.

RULE 72. Where a defendant in equity files a cross bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross bill. The answer of the original plaintiff to such cross bill may be read and used by the party filing the cross bill, at the hearing, in the same manner, and under the

68. Testimony may be taken by deposition.
69. Time allowed for taking testimony: return of commission to Clerk's office.
70. Testimony *de bene esse*.
71. Form of last interrogatory.
72. Cross bill, for discovery.

same restrictions as the answer, praying relief, may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTER.

RULE 73. Every decree for an account of the personal estate of a testator intestate, shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the Court, what parts, if any, of such personal estate are outstanding or undisposed of, unless the Court shall otherwise direct.

RULE 74. Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit the reference is made, shall cause the same to be presented to the master for a hearing, on or before the next rule day succeeding the time when the reference was made: if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master; at the cost of the party procuring the reference.

RULE 75 Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the Court, or a Judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the Court or Judge the reasons for any delay.

RULE 76. In the reports made by the master to the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination, or answer, were so brought in or used.

RULE 77. The master shall regulate all the proceedings in every hearing before him, upon every such reference: and he shall have full authority to examine the parties in the cause upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents, applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the Clerk's office, or by deposition, according to the acts of Congress, or otherwise as hereinafter provided; and also to direct the mode in which the matters requiring evidence, shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

RULE 78. Witnesses who live within the district, may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpœna in the usual form, which may be issued by the Clerk in blank, and filled up by the par-

73, to 82, inclusive, Concerning References, and the manner of proceeding before referees, and the reports to be made by referees, to the Court.

ty praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in Court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the Court, which being certified to the Clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the Court, or of any Judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the Court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open Court, if the Court shall, in its discretion, deem it advisable.

RULE 79. All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories in the Masters office, or by deposition, as the Master shall direct.

RULE 80. All affidavits, depositions, and documents, which have been previously made, read, or used in the Court, upon any proceeding in any cause or matter, may be used before the master.

RULE 81. The Master shall be at liberty to examine any creditor, or other person or persons coming in to claim before him, either upon written interrogatories, or *viva voce*, or in both modes, as the nature of the case shall or may appear to him to require. The evidence upon such examination shall be taken down by the master, or some other person, by his order, and in his presence, if either party requires it, in order that the same may be used by the Court, if necessary.

RULE 82. The Circuit Courts may appoint standing Masters in Chancery in their respective districts, both the Judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every Master in Chancery for his services, in any particular case, shall be fixed by the Circuit Court, in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon and borne by such of the parties in the cause, as the Court shall direct. The Master shall not retain his report as a security for his compensation; but when the compensation is allowed by the Court, he shall be entitled to an attachment for the amount against the party, who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the Court.

EXCEPTIONS TO REPORT OF MASTER.

RULE 83. The Master, as soon as his report is ready, shall return the same into the Clerk's office, and the day of the return shall be entered by the Clerk in the order book. The parties shall have one month from the of filing the report, to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed, they shall stand for hearing before the Court, if the Court is then in session; or, if not, then at the next sitting of the Court, which shall be held thereafter, by adjournment, or otherwise.

RULE 84. And in order to prevent exceptions to reports from being filed for

73. Exceptions to report of referee.
84. Costs on filing exceptions to report.

frivolous causes, or for mere delay, the party whose exceptions are overruled, shall, for every exception overruled, pay costs to the other party, and for every exception allowed, shall be entitled to costs—the costs to be fixed in each case by the Court, by a standing rule of the Circuit Court.

DECREES.

RULE 85. Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrolment thereof, be corrected by order of the Court, or a Judge thereof, upon petition, without the form or expense of a re-hearing.

RULE 86. In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin in substance as follows:

"This case came on to be heard (or to be further heard, as the case may be,) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz:" [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

RULE 87. Guardians *ad litem* to defend a suit may be appointed be the Court, or by any Judge thereof, for infants or other persons, who are under guardianship, or otherwise incapable to sue for themselves; all infants and other persons so incapable, may sue by their guardians, if any, or by their *prochein ami*, subject, however, to such orders as the Court may direct for the protection of infants and other persons.

RULE 88. Every petition for a re-hearing shall contain the special matter or cause, on which such re-hearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by oath of the party, or by some other person. No re-hearing shall be granted after the term, at which the final decree of the Court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the Court, in the discretion of the Court.

RULE 89. The Circuit Courts (both Judges concurring therein,) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time to alter and amend the same.

RULE 90. In all cases, where the rules prescribed by this Court, or by the Circuit Court do not apply, the practice of the Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district, where the Court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

85. Clerical mistakes in decrees or orders may be corrected by the Court.
86. Form of decretal order. 87. Appointment of Guardians *ad litem*.
88. What petition for a re-hearing shall contain.
89. Circuit Courts may make further Rules of Practice.
90. Practice in cases not herein provided for to be regulated by that of the English Chancery Courts.

RULE 91. Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

RULE 92. These Rules shall take effect, and be of force, in all the Circuit Courts of the United States, from and after the first day of August next; but they may be previously adopted by any Circuit Court in its discretion; and when and as soon as these Rules shall so take effect, and be of force, the Rules of Practice for the Circuit Courts in Equity Suits, promulgated and prescribed by this Court, in March, 1822, shall henceforth cease, and be of no further force or effect. The Clerk of this Court is directed to have these Rules printed, and to transmit a printed copy thereof, duly certified, to the Clerks of the several Courts of the United States, and to each of the Judges thereof.

I, WILLIAM THOMAS CARROLL, Clerk of the Supreme Court of the United States, do hereby certify, that the foregoing ninety-two Rules have been ordered, by the said Supreme Court, to be the "*Rules of Practice in suits in Equity in the Circuit Courts.*"

Promulgated by the said Supreme Court, on this second day of March, in the year of our Lord one thousand eight hundred and forty-two.

Per Curiam:

TESTE:

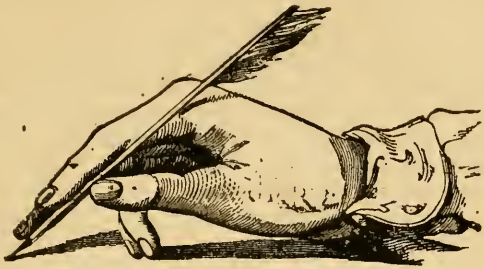
WM. THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

ADDITIONAL RULE ADOPTED DECEMBER TERM, 1863.

No. 93. Ordered that suits in equity for the foreclosure of mortgage in the Circuit Courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the 8th rule of this Court regulating the equity practice, where the decree is solely for the payment of money.

91 Parties scrupulous regarding oath, may make affirmation.

93. In suits in foreclosure, decree may be entered and execution issue for balance after sales.



CHAPTER IV.

OF THE

OFFICE, POWERS AND DUTIES OF CLERKS OF COURT.

SECTION 1. The Clerk elected in each County, under the provisions of Section 27 of Article IV of the Constitution, shall be the Clerk of the Courts of General Sessions and Common Pleas, and may appoint a Deputy, to be approved by the Court of Common Pleas, a record of whose appointment shall be made in the Clerk's office; and in case no Clerk exists, the Judge shall have authority to appoint a person, who shall perform the duties of Clerk, and be required to give the usual bond before entering upon the duties of the office.

SEC. 2. Every Clerk aforesaid, before entering on the duties of his office, in addition to the oath prescribed by the Constitution for persons chosen or appointed to any office of profit or trust, shall take the following: "I, A. B. do further swear (or affirm,) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected, (or appointed,) and I will not, directly or indirectly, sell or dispose of said office, or the profits thereof, but will resign or continue to discharge the duties thereof during the period fixed by law, if I so long live: So help me God;" which said oaths shall be endorsed upon the commission, subscribed by the officer, and attested by two Trial Justices of the County, for which the said Clerk shall have been elected or appointed; and at the opening of the first Court which may be held thereafter, the said Clerk shall produce his commission, with the endorsements aforesaid, and after the same has been published, by being read in open Court, shall make a fair entry thereof in the Journals of the Court.

1. Clerks of Sessions and Common Pleas. XIV, Stat., 10, §17.—332, §§1, 2, 3.—Code, §33.
2. Oaths to be taken by Clerk.—Commission to be read at first Court, and entered on journal. VI, Stat., 27, §3.—XI, 93, §2.

SEC. 3. That every such Deputy shall, previous to entering on the duties of his appointment, take the oath or affirmation prescribed by the Constitution of the State; and, when so qualified, the Deputy may do and perform any and all of the duties appertaining to the office of his principal.

SEC. 4. That the appointment of every such Deputy shall be evidenced by a certificate thereof, signed by his principal, and shall continue during the pleasure of the principal; and every principal may take such bond and security from his Deputy as he shall deem necessary to secure the faithful discharge of the duties of his appointment, and the principal shall, in all cases, be answerable for the neglect of duty or misconduct in office of his Deputy.

SEC. 5. That the Clerks of the Courts of Common Pleas and General Sessions of the Counties in this State, before receiving their commissions, shall enter into bond, to be executed by them, and any number of sureties, not exceeding twelve nor less than two, to be approved by a majority of the Board of County Commissioners, that is to say: The Clerk of the Court of Common Pleas and General Sessions for Charleston County, twenty thousand dollars; the Clerk of the Court of Common Pleas and General Sessions of each of the other Counties, ten thousand dollars.

SEC. 6. That every Clerk shall give constant attendance, either by person or by deputy, in his office, (Sundays, Christmas Day, and Anniversary of American Independence excepted,) to be kept in a room to be provided for that purpose, in the court house, and shall discharge all the duties required by law, or the rules of Court, from time to time, or that may be incident to the office; make a full, fair and correct entry and record of the proceedings of the Courts, and other matters pertaining to his office, in the various books required to be kept, conforming to the mode prescribed by law, order of the Court, or usage of the office; file, in their proper order, all original papers, in causes instituted, or other authorized proceedings, and preserve with care all papers, books and furniture pertaining to, or connected with, his office.

SEC. 7. The office of every Clerk shall be furnished with suitable cases, with proper partitions for filing papers, under appropriate labels, well secured from dust by means of shutters filled with glass, to slide on rollers, with labels painted on the outside, indicating the kind of records; and on the case, inside, the number roll (or, if in session, the term) of the papers contained within each partition; the lower part of which cases shall be divided into convenient apartments for the books of the office, with doors secured with proper fastenings, with labels painted outside indicating the particular descriptions of records contained in each division, that is to say: "Journals," "Dockets," "Records After Judgment," "Miscellaneous Records," and 'Register's Department.' Each office shall be furnished with a seal of office, with the proper device, a press, and such blank books for the various records as may be needed from time to time, to be procured by the Clerk, the expenses thereof to be defrayed by the County Commissioners.

SEC. 8 Every Clerk shall have charge of the Court house within his County; open the same, when required for public use, and at all other times keep it closed;

3. Deputy Clerk's oath of office, 14, Stat., 332, §3.
4. Certificate of Deputy's appointment. Ib. Stat. 332, 2.
5. Bonds and sureties of Clerks—Amount of bonds. Ib. Stat. 19, 1.
6. Office days, and hours, and duties, 11. Stat. 100, 4.
7. Clerical regulations of office—Cases for paper—Seal—Record Books. Ib. Stat. 100, 5.
8. Clerk to have charge of Court-House—Penalty for keeping open at night. Ib. Stat. 101, 6

and for every night any court house shall be kept open, the Clerk shall be liable to a penalty of five dollars, for the use of the County, to be recovered by indictment.

SEC. 9. The original papers of record in each cause wherein judgment may be signed or confessed, or decree may be entered, shall be filed, according to the number of enrollment, in the book of abstracts of judgments, or of decrees, placing all the papers in each cause together. Original papers in the sessions shall be filed according to the term at which they were disposed of, alphabetically arranged for each term, according to defendants' names, all relating to the same cause together. Other papers required to be returned to, or kept in the office, shall be endorsed with the character, date of filing, and number on file, numbering each kind, from one onward, and keeping all relating to the same matters together, under the same number, and shall be filed according to date and number, in appropriate boxes, with suitable labels, put up in packages, rated according to the year in which they may be filed; upon the envelope or card there shall be an endorsement of the description or kind of papers therein, and reference to number, under the following heads: Bonds in Attachment, Bonds of Constables, Certificates from Supreme Court of Trial Justices' Appeals, Commissions, Inquests by Coroner, Reports, &c., *de Lunatico Inquirendo*, Naturalization, *Venire Facias*, Estrays, Dower, Partition, Escheats, Affidavits, Attachments for Contempt and Rules, Sessions papers disposed of, to be transferred after judgment, where the same may be authorized. The following endorsement shall be made upon the record where the proceedings warrant it, viz: On the judgment roll, the date when filed, number on docket, date and amount of judgment in figures, amount of taxed costs, judgment when signed, execution, date of issuing, and at the top, at some conspicuous place, the number roll. On Bills of Indictment, date and character of finding by Grand Jury, number on docket, arraignment, verdict or other disposition, and date, amount of taxed costs, execution, date of issuing, and kind. On all papers returned by Trial Justices in the Sessions, shall be endorsed their character, and date of filing. On every execution, before leaving the Clerk's office, shall be endorsed, near the top, the number roll, or, if in the Sessions, the term under which the case is filed, and in all instances, when an execution is returned for renewal, the fact and date of such renewal shall be endorsed on the execution so returned, and on the renewed execution shall be endorsed the date when first execution was lodged in Sheriff's office. All original papers in dower, partition of real estate, and inquisitions, shall be filed according to number roll, the papers pertaining to each being placed together, and the number roll plainly endorsed on the envelope, or outside paper, and also the book and page of record.

SEC, 10. That the books to be used by the several Clerks shall be well bound and of good materials, as follows:

1. "COURT OF COMMON PLEAS JOURNAL"—Which shall contain a full account of the proceedings of Court, from the opening to the adjournment, excluding motions refused. A short statement of each case called, and manner of disposition, and every order of reference, each under a general order, as far as may be; record of the names of the jurors composing each Jury; and all changes therein, and designating the Jury who may try each cause under the title thereof, together with an exact copy of their verdict; and whether upon trial before Jury or Judge, or by

9. Original papers to be filed—Endorsement on, and manner of filing—Labels—Endorsement upon record—On bills of Indictment—On Sessions papers—On Executions—Original papers in dower, how filed. 11. Stat. 101, 7.

10. Books to be used by Clerk.

default, and if in default, whether in proof or reference, and all assessments each, in words at length, and not in figures; awards confirmed; confessions of Judgment during Court; final judgment; copies of all orders passed, or motions granted, and other matters specially ordered by the Court to be entered.

2. "COURT OF GENERAL SESSIONS JOURNAL"—To be kept in a separate volume, after like manner, as far as may be, and including the finding of Grand Juries on bills given out with their other presentments; and sentences of the Court on parties convicted; orders of estreat; fines imposed, and other matters specially ordered for entry by the Court.

3. "INDEXES TO THE RESPECTIVE JOURNALS OF THE COMMON PLEAS AND GENERAL SESSIONS"—To be alphabetically arranged at the end of each volume, which Index shall always be brought up by the first day of each succeeding term.

4. "FILE BOOK"—In which shall be entered every case, on filing the complaint, showing, in separate columns, names of Parties, Plaintiff's Attorney, Defendant's Attorney, date of filing Complaint, date of Answer, Demurrer, etc., replication, and date of order for Judgment.

5. "DOCKETS"—For Issues, Sessions, and Contingent, to be kept in separate volumes, for use of the Court; and a Bar Docket, in a single volume, to be made on, and before the meeting of the Court, and the Issue Calendar and Contingent, to be kept up as the pleadings are made up, or cases occur during the term, for both the Court and the Bar. No cause shall be entered on the Docket, except by the Clerk, or his Deputy, not by him, until the pleadings are made up. The Dockets of the Court shall be regularly preserved as a record of the Court, and shall show, in separate columns, the number of Cause, number of Term, names of Parties, cause of Action, Plaintiff's Attorney, Defendant's Attorney, (and, in the Sessions, Prosecutor's name;) Order of the last Court, and place for the event of suit, to be entered by the Judge.

The Sessions Docket shall contain, separately arranged, cases of the previous term, under the title "Traverses;" and cases under the present term, under the title "Calendar."

The Contingent Docket shall contain, in the Sessions, all the Rules, Bills found in which Defendants have not been arrested, and cases struck off, but in which *nol pros*, has not been entered, to be called on motion of the Solicitor.

6. "ABSTRACT OF JUDGMENTS"—In which shall be entered each case wherein judgment may be signed, including each case in dower, partition, and escheat, after judgmeut or final order, with separate columns, showing number of Enrollment, names of Parties, cause of Action. Attorney, date of Judgment, amount of Judgment, time of bearing Interest, how Judgment obtained, Costs, (separating Attorney, Clerk, Sheriff, Witnesses and Total,) kind of Execution, date of Issuing, Sheriff's Return, when Renewed, and Satisfaction, together with an Index, by the names of Defendants, and a cross Index by the names of Plaintiffs, each alphabetically arranged and kept in separate volumes, with the number of enrollment of Judgment.

10. Common Pleas and General Sessions Journals, and Indexes to each—File Book. 11. Stat. 102. ‡8—Dockets, entries in to be made by Clerk—Sessions and Contingent to contain what. Ib. 103. ‡4. Absract of Judgments, what to contain. Ib. 103. ‡5. Code §269, 288, 303, 305, 336. 337, 401.—Sessions Index Ib. 104. 7. Pleadings and Judgments Ib. 104, 8.—Confessions of Judgment before Clerk, Ib.. 104 § 9. Code, §§ 399, 400, 401—Fines and forfeitures. Ib., 104 § 10—Roll. of Trial Justices and Constables, Ib 104, §11—Estrays. Ib., 104, §13—Orders &c., Code, § 335—Miscellaneous Index 11, Stat. 104 ‡ 14, Common Pleas Calendars, see 27th Rule of Court.

7. "SESSIONS INDEX"—By names of Defendants, alphabetically arranged, together with the offence charged, disposition of the case, and the term when ended, and number on file.

8. "PLEADINGS AND JUDGMENTS"—In which shall be entered, at length, the Complaint, Answer and Judgment in each cause wherein judgment may have been signed, and also the proceedings in Dower, Partition and Escheat, when the final order and judgment of the Court shall have been had, with an Index to names of Plaintiffs.

9. "CONFESSIONS OF JUDGMENT BEFORE CLERK"—Into which shall be entered such proceedings kept with reference to the number of enrollment in Book of Abstracts, instead of page, together with an Index to this particular volume, in the names of Defendants.

10. "FINES AND FORFEITURES"—In which shall be entered the names of all persons fined by the Court, or whose recognizance may be estreated, with separate columns, showing name, cause of fine, when fined, by whom fined, amount of fine, to whom due, when collected, by whom collected, why not collected, when paid over, and to whom.

11. "TRIAL JUSTICES' AND CONSTABLES' ROLL"—In which shall be entered the name of each Trial-Justice and Constable, on taking the oaths of office, representing, in separate columns, the names, date of qualification, office, expiration of term, a genuine signature, and, in the case of a Constable, the names of the sureties to his bond, with an index of each name, alphabetically arranged.

12. "ESTRAYS"—In which book shall be entered, in separate columns, date of entry, kind of entry, description by appraisers, and their names, name of the Trial Justice, appraiser's valuation, by whom taken up, when sold, and disposition of proceeds.

13. "BOOK OF ORDERS Appointing Receivers of Judgment Debtors."

14. "MISCELLANEOUS INDEX"—In which shall be entered, alphabetically, the names of all aliens who have taken any step towards naturalization; all persons concerning whom proceedings *de lunatico inquirendo* may be instituted; names of aliens naturalized; certificates and papers concerning corporations, and all matters required by law to be recorded and not otherwise provided for, referring to papers on file by number and label.

SEC. 11. The preceding books, required to be furnished and kept by the Clerk, shall be of the following sizes, respectively:

1. Court of Common Pleas Journal, General Sessions Journal, Rules, Fines and Forfeitures, and Estrays, each of the size denominated "Demi;" the Journals containing not less than six quires each, and the other books not less than three quires each.

2. Docket, Sessions Index, Confessions of Judgment before Clerk, Trial Justices' and Constables' Roll, Book of Orders Appointing Receivers of Judgment Debtors, and Miscellaneous Index, each of the size denominated "Broad Cap," the first named containing not less than two quires, and the remaining books not less than four quires each.

3. Pleadings and Judgments, in a volume not less than the size denominated "Medium," containing not less than six quires.

11. Size of books to be kept by Clerks 11, Stat. 105, § 8.

4. Abstract of Judgments, of the size denominated "Super Royal," containing not less than four quires.

5. Indexes to preceding volumes, of the size denominated "Long Demi," containing not less than six quires.

SEC. 12. That to prevent false and erroneous entries in the Journals of the Courts of Common Pleas, it shall be the duty of the Clerks of the said Courts, respectively, on each day previous to the adjournment of the Court, to read over to the Judge who may preside, the minutes or entries which shall have been made during the day in the said journal.

SEC. 13. The Clerk shall not, in any case, permit either the books or the records to be removed from his office, though it shall be his duty at all times to permit either party to a suit, or his agent, or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto, without charge, or furnish, on application, certified copies thereof, on payment of fees per copy sheet.

SEC. 14. The Clerk of the Court of Common Pleas in each of the Counties of this State, in which the public records in the custody of such officer were destroyed or carried away during the war of 1861, '62, '63, '64 and '65, or in any other way lost, shall, at the expense of the funds in the hands of the County Commissioners for his County, procure books, of proper size, and suitably ruled and securely bound, to be labelled "Abstracts of Lost Judgments and Decrees," or, "Of Lost Decrees," as the case may be, in which he shall enter an abstract of every judgment or decree, a new record of which shall be ordered to be substituted, setting out in distinct and appropriate columns all the particulars required to be ascertained by the order of the Court, and such entry shall, without other or further record, be good and sufficient in law for all purposes for which the original record itself could have been used, and of equal authority therewith in all respects.

SEC. 15. That the Clerks may administer oaths, take depositions and affidavits, sign orders of reference in vacation made by consent of parties, and take renunciations of dower and inheritance.

SEC. 16. They shall have the privilege of acting as Attorneys and Solicitors in all the Courts in the State, except in the Courts of their respective Counties, provided they shall have complied with the requirements of law regulating the admission of persons to practice as Attorneys, Solicitors and Counsellors in the Courts of this State.

SEC. 17. They shall not act as Sheriffs or Deputy Sheriffs, except as provided by Section 4, Chapter 20, of this Act.

SEC. 18. It shall be the duty of the Clerk, diligently and uprightly, to put in execution the laws of force directing the drawing, balloting, impanneling and summoning of jurors, so far as his co-operation may be required.

SEC. 19. That immediately after the adjournment of any Court of Common Pleas and General Sessions, the Clerk thereof shall make out a roll of the Grand

12. To read daily entries to Judge. 7, Stat., 279, § 1.

13. Books and records not to be taken from Clerk's office—May be inspected by parties or attorneys. 11 Stat., 105, § 9.

14 Abstract of lost Judgments and decrees, revived, kept by Clerk. 13 Stat., 355, § 2.

15. Clerk may administer oaths &c. 11 Stat., 112, § 32

16. Clerks may act as attorneys. 11 Stat., 538.

17. Not to act as Sheriff or Deputy. 11 Stat., 112, § 32.

18. To enforce Jury laws. 15 Stat., 105 § 10; 14 236, § 7 690.

Jurors, and Petit Jurors and Constables who shall have attended the same, exhibiting the name, time of service, and amount due each Juror and Constable, and the term at which the service was performed, and shall enter the same on the Journals of the Court of the term when such service shall be performed, and shall forthwith transmit to the County Commissioners of the County a certified copy of such roll, and shall furnish each Juror and Constable with a certificate, in the following form :

"STATE OF SOUTH CAROLINA :

I, A. B, Clerk of the Court of Common Pleas and General Sessions for County in the said State, do certify that attended as a Juror, (or actually served as a Constable, as the case may be,) for said County, days at Term, A. D. , and is entit'e.l to receive for the same dollars and cents; which certificate shall be signed by the Clerk of the Court, who shall issue the same, and be countersigned by the presiding Judge; or, in any case where a Judge may not be present during the term, the certificate shall be countersigned by the Sheriff of the County; and, in addition to what is above described, shall set forth such absence of the Judge; and all certificates so issued and executed shall be valid.

SEC 20. Whenever it shall so happen that any Court of Law in this State cannot be held at the time appointed, in consequence of the absence or indisposition of the Judge, it shall be the duty of the Clerk of such Court, or his Deputy, to open and adjourn the same from day to day, until the Court shall meet, or until he may receive due notice that the Judge will not be present, when he shall adjourn the same until the first day of succeeding term.

SEC. 21. It shall be the duty of the said Clerk to issue every execution, bench warrant, or other process, issuable, or directed to be issued, by the Court of Sessions, in the name of the Attorney General or Solicitor of the Circuit, and also to issue all rules and notices ordered in the Common Pleas, and test in his own name, under the seal of the Court, all writs and processes issued either in the Common Pleas or Sessions, and to sign officially all judgments, and state the time when each is signed and entered.

SEC. 22 Whenever security for costs may be ordered to be given, or may be tendered, by any plaintiff, in vacation or in term time, the Clerk aforesaid shall witness the signature of the surety, and shall, in the first instance, judge of the sufficiency of the security; the form of the undertaking to be according to law, or the rule of the Court on that subject, if there be no law.

SEC. 23. The Clerk, as to lands within his County, and deeds to be recorded in his office, is authorized to grant all writs of *dedimus potestatem*, directed to two or more Commissioners, for taking renunciations of dower, or releases of inheritance, from *femes covert*, or for the purpose of taking probate of the executions of all

19. Clerk to make roll of Jurors and Constables and return same to County Commissioners, and to furnish Certificates to jurors and Constables, which are to be signed by a Judge or Sheriff. 11 Stat, 106, § 14.

20. Clerks to adjourn Court in absence of Judge. Ib. 106, § 13.

21. To issue bench warrants, and other processes, and sign judgments officially. Ib. Stat., 107. § 16.

22. To judge of security offered. Ib, 100. § 22.

23. To grant writ of *dedimus potestatem*. Ib, 100, 23.

deeds under seal, where such *femes covert*, or the persons to prove such deeds, reside without the limits of this State.

SEC. 24. It shall be the duty of the Clerk, or of the Register of Mesne Conveyances, as the case may be, in whose office any judgment or mortgage may be of record, on the receipt of the fees, to permit any judgment creditor, or his or her attorney, or any mortgagee, as the case may be, to enter satisfaction thereof, or if any Judge shall order satisfaction to be entered thereof, to enter of record satisfaction accordingly.

SEC. 25 It shall be the duty of any Clerk, or acting Clerk, to advertise any election to be held for any Judge of Probate, Sheriff, or Clerk, to be elected in the County where such Clerk officiates, to supply any vacancy occurring in either of such offices, where such vacancy shall exceed one year, and issue notice to the Commissioners of Election to conduct the same, and for every willful neglect herein he shall be liable to indictment and punishment as for a high misdemeanor.

SEC. 26. That in case of any vacancy in the office of Judge of Probate, the Clerk of the County shall take charge of said office, and all papers therein, and dischage the same duties, receive the same fees, and be subject to the same liability as by law provided for a Judge of Probate, until a Judge of Probate shall be appointed by the Governor, or elected and commissoned for such County.

SEC. 27. That in case of vacancy in the office of Sheriff, the Clerk of the County shall take possession of the jail of such County, and charge of the prisoners confined therein ; and, also, possession of the Sheriff's office and the papers therein, until the Coroner for such County may take charge of the same, or until a Sheriff shall be appointed by the Governor, or elected and commissioned for such County.

SEC. 28. When any execution shall be returned for renewal or as satisfied by any Sheriff, the Clerk shall enter such renewal or satisfaction in the appropriate column of the abstract book, and, in case of satisfaction, shall enter the same on the original record. and it shall not be lawful for any Clerk to affix the seal of the Court to any renewed execution, unless the one previously issued shall have been delivered to him, or unless authorized by a Judge's order.

SEC. 29. It shall be the duty of the Clerk to administer the oath of office required to be taken by Trial Justices appointed within his County, on their application, within ninety days of such appointment ; and on the first day of November, annually, he shall transmit a list of the names of Trial Justices who have qualified during the preceeding year, to the office of the Secretary of State at Columbia.

SEC. 30. It shall be the duty of the Clerk to administer the oaths of office required by law to be taken by a Constable, on his entering into bond, as prescribed, of the sufficiency of the surety to which the said Clerk shall be judge, to be filed in the office of the Clerk ; and the Constable shall furnish a genuine signature of his name in the book prescribed, whereupon the Clerk shall furnish an official certificate of such qualification ; and when such Constables as shall be summoned in

24. Satisfaction of judgements and mortgages, how entererd. 11 Stat., 109, § 19.

25. To advertise for elections in certain cases—Penalty for neglect. Io Stat , 113, § 39. Gen Stat., 35, § 2.

26. To act as Judge of Probate, when office is vacant. Ib, 113, § 39.

28. To act as Sheriff when that office is vacant. Ib.

28. Renewal or satisfaction of executions to be appropriately entered. Ib, 109. § 19

29. To administer oath of office to Trial Justices, and transmit list annually to Sec. State. Ib, Stat., 112, § 30.

30. To swear in Constables, take sureties and furnish certificates. Ib, 112, § 31.

writing by the Sheriff to atted each Court shall fail to appear, according to such summons, such default shall be noted by the Clerk, and such other proceedings had as in case of jurors in default, or as the Court may order.

SEC. 31. In all cases the Clerk shall render his account against the County for fees in State cases, under oath, to be taken and subscribed before the Judge or any Trial Justice of his County, in which the nature of the service shall be fully set forth, and if in the Sessions, the name of the party, offence, charge, and termination thereof, and which shall be credited with all moneys received by him and due to the County ; nor shall any Clerk be entitled to receive any fees from the County in any case where the defendant is convicted, unless he makes oath that such defendant has been discharged from inability to pay costs.

SEC. 32. Before the accounts of Clerks shall be presented to the County Treasurer for payment, they shall be sworn to by said officers, examined and certified to by the Judge presiding in the Circuit Court in the County, approved and ordered to be paid by the County Commissioners.

SEC. 33. In all cases where any Sheriff, Coroner, Trial Justice, or Constable, shall be required to obtain the official certificate of any Clerk to his contingent account, specifying any matters required by law to be certified, the Clerk shall furnish such certificates, according to the facts, upon application and payment of fees.

SEC. 34. It shall be the duty of the Clerk to furnish, free of charge, to the County Commissioners, when required, an official certificate of all liens that may be of record in his office, on the property of any individual who may be offered as surety to the bond of any public officer, whether by judgment, mortgage, or otherwise.

SEC. 35. The Clerk of the Court of Common Pleas and General Sessions of each County in this State shall furnish, and is required to keep in his office, the weights and measures established by law, which shall be the standards of all other weights and measures in said County, and to which any person shall have free access to test the same ; and the Governor of the State is authorized and required to purchase such standard weights and measures out of the fines and forfeitures incurred in the respective Counties where such weights and measures are to be kept.

SEC. 36. It shall be the duty of the Clerk to return to the County Commissioners, on or before the last day of October in every year, an account upon oath, in duplicate, of all fines and forfeitures inflicted in their respective Courts during the preceding year, and of the amounts had and received by them, and of the manner in which said fines were disposed of, under penalty of two hundred dollars, to be recovered against any Clerk for default herein, by action. And it shall be the duty of the County Commissioners to request the Attorney General, or Solicitors, as the case may be, to sue for and recover the said sum of every Clerk that may fail to render such account.

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31. Clerks to make oath their accounts. 11 Stat., 113, § 35.—14, 272, § 4.
32. Clerk's accounts to be approved by Judge and by County Commissioners. 11 Stat., 274, § 2
33. Clerks to furnish Sheriffs and other officers' certificates. 14 Stat., 113, 37.
34. To give County Commissioners certain information, free. 12 Stat., 113, 37.
35. Clerks to keep Standard weights and measures. 11 Stat., 173.—12 Stat., 300, § 1.
36. Clerks to render to County Commissioners, annually, account of fines and forfeitures,—Penalty for neglect. 5 Stat., 710, 27 ; 9 Stat., 139, 14.

SEC. 37 Every Clerk shall be responsible for the books, papers and furniture in his office ; and upon his retiring from office, or death, he or his representatives shall be bound to transfer all such books, papers and furniture to his successor, immediately after such successor shall have entered upon the duties of his office, under a penalty of one thousand dollars, and imprisonment, not exceeding one year ; but before surrendering such books, papers and furniture, the Clerk so retiring from office, or his representatives, shall be entitled to require from such successor, (who, under like penaly, shall be bound to execute the same,) a receipt, in writing, therefor, which shall specify the number, title and condition of every book, the number of records, as appears by the enrolment, and such other classification as it may be convenient to adopt from the arrangement of the office, all the packages of papers in office, and the description and condition of each article of furniture ; a duplicate of which receipt shall also be given, and shall, by the Clerk so retiring from office, or his representative, be filed in the office of the County Commissioners for the County ; and every Clerk, having retired from office, or his represenatives, shall be liable to an action, in the name of the County, for damages for any books, papers and furniture, which shall be proven to have been in his possession, and shall not appear, by such receipt, to have been transferred to his successors, or, having been so transferred, shall appear to have been through neglect, injured during his continuance in office.

SEC. 38. That all fines and penalties imposed and collected by the Circuit Court of General Sessions in criminal causes shall be forthwith turned over by the Clerk of said Court to the County Treasurer of the County wherein the same are imposed : *Provided*, That when, by law, any person or persons entitled, as informer or informers, to any portion of the fine or penalty, imposed and collected, the same shall be immediately paid over to him or them. They shall also pay annually to the County Treasurers of their respective Counties, for the use of the State, all such moneys as may have come into their hands as taxes from persons representing, publicly, plays and shows within the limits of their said Counties.

SEC. 39. If any Clerk shall fail to pay over any moneys paid to him by order or permission of the Court, within five days after demand of the person entitled to receive the same, he shall forfeit and pay five per cent per month, until the same shall be paid over, to be recovered, together with such amount received, by action on his official bond, besides being subject to rule and attachment as for a contempt.

SEC. 40. If any Clerk fail to pay over fines and forfeitures received by him, within five days after demand of the person entitled to receive the same, he shall forfeit and pay five per cent, per month, until the same shall be paid over, to be recovered, together with such amount received, by action on his official bond, besides being liable to rule and attachment as for a contempt. If he shall fail to give to some member of the Board of County Commissioners the notice required by law to be given, he shall forfeit and pay double the amount so detained without notice.

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37. Clerks responsible for furniture and records—liable for damages to—Penalty for not transferring to successor. 11 Stat., 111, 41.

38. Fines and penalties &c., how disposed of. 11 Stat., 65, 1 ; 5 Stat., 711, 35 ; 11 Stat., 246, 3.

39. Penalty for not paying over funds. 11 Stat., 111, 23.

40. Penalty for failure to notify Commissioners. 11 Stat., 111, 28.

SEC. 41. At each stated session of the Court of Common Pleas, the Clerk thereof shall present an account to said Court of all moneys remaining therein, or subject to the order thereof, stating particularly on account of what cause or causes said moneys are deposited, which account, and the vouchers thereof, shall be filed in Court.

SEC. 42. That in every case in which a Clerk of the Court of Common Pleas shall issue an execution, he shall attach thereto a bill of each item of costs therein charged, and shall, on application of defendant in execution, tax all costs which accrue to the Sheriff for services on such execution.

SEC. 43. If any Clerk shall charge any other fees or for any other services than those allowed by law, he shall be liable to forfeit to the party injured ten times the amount of excess of fees so improperly charged, to be recovered by action in the Court of Common Pleas, or by rule, when the penalty may not exceed twenty dollars.

SEC. 44. The Clerks of the Courts of Common Pleas in this State, in all civil causes or proceedings hereafter to be instituted, or now pending, or at issue, in the Courts of Common Pleas, for their respective Counties, shall, upon the application of either party to such cause or proceeding, after ten days' notice to the adverse party, take, in writing, the depositions of said party, or of any witness or witnesses in said cause or proceeding, whose examination shall be required by the party making such application; upon taking which depositions, the several parties shall be entitled to the same rights of examination, cross-examination, and examination in reply, and to the same exceptions to the admissibility of evidence, as are allowed by law upon examination before the Court. And the depositions so taken shall be certified by the Clerk before whom such examination was had, and shall be read in evidence at the trial of the said cause or proceeding; subject, nevertheless, to the right of either party to require the personal attendance and *vive voce* examination of the witness or witnesses at the trial of said cause or proceeding; the exercise of which right, however, not to cause a continuance or delay in the trial of the said cause or proceeding. That every Clerk of the Court of Common Pleas shall have power to compel the attendance before him of the witness or witnesses to be examined, as aforesaid, upon the application of a party to any civil cause or proceeding hereafter to be instituted, pending or at issue in the said Court; for which purpose, he may issue a subpœna to any such witness, which shall be served personally; and if any witness, upon whom such subpœna has been duly served, shall fail to attend conformably thereto, the Clerk by whom the same was issued shall have power to issue a rule, requiring such witness to show cause why he should not be attached for contempt; and, upon the failure or neglect of such witness to show cause, the said Clerk shall have power to issue an attachment against such witness for contempt, which attachment shall not be dissolved, except by the order of a Judge, or of the said Clerk.

That every Clerk of the Court of Common Pleas, for taking the depositions hereinbefore mentioned, shall be entitled to demand and receive the sum of one dollar for each witnes examined, to be paid by the party against whom judgment shall be rendered in said cause or proceeding.

41. Clerks to present accounts of money received to Court. 14 Stat., 17. 13.

42. Bill of costs to be attached to each execution. 6 Stat., 336. 5.

43. Liability of Clerks for overcharge for fees or services. 11 Stat., 17, 2.

44. Clerks may take depositions—compel attendance of witnesses, and receive special fees for examination. 15 Stat., 41.

SEC. 45. That an Act entitled "An Act to revise, simplify and abridge the rules, practise, pleadings and forms of the Courts of this State," be, and is hereby, amended as follows, viz: Insert, in Section 330, at the close of sub-division 4 of said Section of said Act, the following words: "And in any civil action under this Code, Clerks of the Courts, Trial Justices and Sheriffs shall be entitled to demand and receive of the plaintiff in any such action, in advance, the same compensation as is allowed by law."

SEC. 46. It shall be the duty of the Comptroller-General to ascertain the number of officers in this State from whom bonds are required, and to cause an equal number of said bonds to be printed annually, at the expense of the State, having thereon the blank forms for the proper officers to approve securities, and for probate; and to distribute to each County, annually, a number of said bonds equal to the number of officers from whom bonds are required in said County respectively.

It shall be the duty of each Clerk to receive the bonds for his County, and to deliver one to each person elected or appointed to any such office, whenever called for.

SEC. 47. That guardians, trustees, administrators, executors, Probate Judges and Clerks of Courts, and all other persons holding funds in trust for investment, are authorized to invest the same in bonds of the State of South Carolina. And are hereby relieved from all responsibility for said investment, except for the safe keeping of the bonds; *Provided*, That, as to officers of the Court, there be no order of the Court directing a different investment.

SEC. 48. That the Clerk of the Court shall file the duplicate certificate of the appraisers and Trial Justices in all instances of Estray taken up, where the same shall be returned, and also the certificate of such Trial Justice, of the amount and disposition of the funds arising therefrom; the same being entered in the book of estrays, which shall always be subject to the inspection of any person desiring to examine the same free of charge.

If any Trial Justice or Clerk of Court, or person taking up any estray, shall refuse or neglect to perform the duties prescribed by this Chapter, each and every of them shall forfeit and pay the sum of twenty-five dollars, to be recovered and applied to the use of any person who shall inform and sue for the same, and shall more over be liable in damages to the party aggrieved.

SEC. 49. The Clerk of every Circuit Court shall, upon the request of either party, issue one or more subpœna or subpœnaes, for any person or persons to attend as witnesses in any cause or matter depending in the same, expressing in every subpœna the time and place when the witnesses, are to appear, the names of the parties to the suit, or cause wherein they are to give evidence, and at whose request they are summoned.

If any witness shall be an inhabitant of another County, the Clerk shall issue a subpœna directed to the Sheriff of such County where such witness usually resides, which shall be by such officer executed, and returned to the office whence the same issued.

45. Clerks, Sheriffs and Trial Justices may demand fees in advance. Ib, 190.
46. Clerks to receive, and distribute bonds of public officers. VI. Stat., 384, 12.
47. How Clerks holding trust funds may invest them. Gen. Stat., 120, 97.
48. Clerks to file certificate of appraisers of Estrays. Ib. 854, 7. 10
49. Clerks to issue subpœnas for witnesses, on request of parties. 7, Stat., 219, 16.

SEC. 50. That any Judge of the Circuit Court, or the Clerk of said Court, shall have power and authority, on the application of any party to a suit pending in the Court of Common Pleas for his County, which application may be made to him by the party, either in person, or by agent or attorney, to grant commissions, under the seal of the Court, directed to three or more commissioners, authorizing and empowering them, or any two of them, to take the depositions, in writing, of the witness or witnesses therein mentioned, resident without the limits of the State or County where the trial is to be had, or that reside at a greater distance than one hundred miles from the Court where said action is instituted, or may be about to remove without the limits of the State before the sitting of the next Court, or before the suit will stand ready for trial, or whose presence cannot be procured by reason of indispensable attendance, on some public official duty, or professional duty as an attorney at such time, or of such sickness or infirmity as incapacitates such witness or witnesses from traveling, in order to appear and testify touching such matters as they may have in charge by such Commission: *Provided*, That ten days' notice of such application, with a copy of the interrogatories proposed, be served upon the opposite party or attorney, who shall have leave to resist such application, on cause shown: *Provided, also*, That such application be accompanied by an affidavit of the party applying, declaring his or her belief of the materiality of any witness proposed to be so examined, together with the fact which may entitle the party to such commission: *Provided, also*, That either party to a cause in which a commission has been issued may, in the discretion of the Court, on motion, and upon showing that two days' notice thereof has been given to the adverse party or attorney, be entitled to a rule to compel the personal attendance of any witness so examined, who may reside within the County, or not more than thirty miles from the court house where the trial is to be had.

SEC. 51. That the Clerk of the Court of Common Pleas in each County, at least fifteen days before the commencement of any regular term of the Court of General Sessions for the County, and ten days before any special session requiring a jury, and the in County of Charleston like periods before the first of each alternate week of the Court of Common Pleas, and at such other times as the respective Courts may order, shall issue writs of *venire facias* for jurors, and shall therein require the attendance of jurors on the first day of the term, and for the Court of Common Pleas for the County of Charleston on the first and each alternate week thereafter, and such others days as the Courts may order. The petitjurors returned for the Court of General Sessions for Charleston County shall serve for the term, and the jurors returned for the Court of Common Pleas for two weeks; the jurors for the Court of General Sessions for all other Counties shall serve for the term, and for the term of the Court of Common Pleas immediately following.

Nothing contained in this Chapter shall prevent the Clerk of any Court of Common Pleas from issuing *venires* for additional jurors in term time, whenever it is necessary for the convenient dispatch of its business, in which case the *venires* shall be served and returned, and the jurors required to attend on such days as the Court shall direct.

SEC. 52. When jurors are to be drawn, the Board of Jury Commissioners shall attend at the office of the Clerk of the Court of Common Pleas within and for that County, and, in the presence of the Clerk of the Court and the Sheriff of the Coun-

50. Clerks may grant commissions to examine witnesses. 5. stat. 45. 9—6 44. 1.—11. 107 ,16.
51. Venires, regular and special, for juries, to be issued by Clerks. Gen. Stat., 476, 10, 12.

ty, shall shake up the names in the jury box until they are well mixed, and having unlocked said box, the said Board of Jury Commissioners, in the presence of the Clerk of the Court and the Sheriff of the County, shall proceed to draw therefrom, without seeing the names written thereon, a number of ballots equal to the number of jurors required. If a person so drawn is exempted by law, or is unable, by reason of sickness or absence from home, to attend as a juror, or if he has served as a juror in any Court within the year then next preceeding, his name shall be returned into the box, and another drawn in his stead; *Provided*, That if the Clerk and Sheriff shall fail to attend, after due notice, the Jury Commissioners shall proceed without them, and the jury so drawn shall be lawful.

SEC. 53. On the day the jurors are summoned to attend at any Court, the Clerk shall prepare a list of their names arranged in alphabetical order. The first twelve on the list who are not exempted, shall be sworn and empanelled as a jury for the trial of causes, and shall be called the first jury. The next twelve on the list shall be sworn and empannelled in like manner, and shall be called the second jury.

SEC. 54. The Clerk of the Court of General Sessions in each County, not less than fifteen days before the commencement of the first term of the Court in each year, shall issue writs of *venire facias*, in each County, for eighteen grand jurors, to be returned to that Court, who shall be held to serve at each term thereof throughout the year, and until another grand jury is empannelled in their stead.

In case of deficiency of grand jurors in any Court, writs of *venire facias*, may be issued to the Sheriff of the County in which said Court is held, to return forthwith such further number of grand jurors from the bystanders as may be needed.

SEC. 55. Immediately after the conclusion of each Court where petit jurors serve, each juror shall, before the Clerk of such Court, prove on oath the number of days he shall have served or attended to serve as a petit juror at such Court.

SEC. 56. Any prisoner on mesne or final process in any civil action, who shall be committed to the custody of the Sheriff of any County of this State, on complying with the requisitions contained in this Chapter, shall be entitled, in every day during his confinement, to be and remain unmolested in any part of the rules, or bounds or limits of the prison where he shall be confined: which rules, bounds or limits shall be coterminous with the limits of the County. Any prisoner in execution on any civil process, shall be entitled to the benefits of this Chapter, provided he shall, within forty days from the date of his bond, render to the Clerk of Court of the County where he shall be confined, a schedule, on oath or affirmation, of his whole estate, or of so much thereof as will pay and satisfy the sum due on the execution by force of which he shall be confined, and proceeds to procure his discharge either as an insolvent debtor or poor prisoner.

The Clerk of the Circuit Court in each County of this State shall hear and determine all applications for the benefit of the provisions of Section 1 of this Chapter. In cases where the Clerk of the Court cannot hear and determine such application, either on account of interest, sickness or absence, but in no other cases whatever, any Trial Justice of the County may hear and determine any application for the benefit of the provisions of the first Section of this Chapter.

52. Clerks to attend at drawing of juries. Ib. 477, 15.

53. Manner of empanneling juries. Ib., 478, 19.

54. Grand jurors, when and how returned, and term of service.—Deficiency in numbers, how supplied. General Statutes, 681, 1, 3.

55. Clerks to prove jurors attendance, on oath. Ib., 479, 32.

56. Clerks or Trial Justices to hear petitions for prison bounds, Ib., 630, 3, 8.

SEC. 57. The Clerk of the Court of the County where he shall be confined, within ten days after the receipt of the schedule from the prisoner, shall give public notice that the prisoner will be liberated and the property assigned, unless satisfactory cause is shown to the contrary before the Judge of the Court where the process originated; and if no satisfactory cause shall be shown to the contrary, the Judge before whom the prisoner shall be brought shall order an assignment of the prisoner's estate and effects, mentioned in the schedule, to be made to the plaintiff, subject, nevertheless, to all prior encumbrances; whereupon the creditor may take possession, and, if necessary, sue in his or her own name for the recovery thereof, and the prisoner shall be discharged from confinement.

SEC. 58. The Clerk or Trial Justice who may hear and determine the application of a prisoner for the benefit of the provisions of Section 1 of this Chapter, shall, if the same be unlitigated, be entitled to receive the sum of two dollars out of the property that may be assigned by the prisoner, as a compensation for his services: and, whenever the same is litigated, the said Trial Justice shall be entitled to receive the sum of four dollars as a compensation for his services, out of the propererty of the prisoner, if the final decision be against him, but if it be in his favor, then the said sum shall be paid by the plaintiff.

SEC. 59. Hereafter, when any prosecutor, resident in the judicial district where the prosecution is instituted, in criminal cases less than capital, shall have been committed to jail by reason of his or her inability to give surety, on his or her recognizance to prosecute, the Clerk of the Court of Common Pleas and General Sessions of such District shall have power to discharge such prosecutor on his or her own recognizance, upon being satisfied of his or her inability to give such surety.

SEC. 60. Whenever any witness in a criminal case less than capital, shall have been committed to jail by reason of the like inability to give surety on a recognizance to testify, the Clerk of the Court shall have the like power to discharge such witness on his or her own recognizance.

SEC. 61. Prosecutors or witnesses failing to appear under such recognizances shall be deemed guilty of a misdemeanor, and the Attorney-General and Solictors are hereby authorized to order warrants to issue against such offenders, without affidavit or bond to prosecute.

SEC. 62. The Clerks of the Court shall be entitled to one dollar costs for each recognizance taken under the provisions of Sections 9 and 10 of this Chapter.

SEC. 63. A transcript from the minute books of the former County Courts shall be good and legal evidence in all trials in any of the Courts in this State, when it may be necessary to give such proceedings in evidence: *Provided*, That such transcript be regularly and duly certified under the hand of, and sworn to by, the Clerk or keeper of the said proceedings and records of the County Courts so abolished, who has, by law, the custody thereof; any law, usage or custom to the contrary notwithstanding.

CLERK AS COMMISSIONER OF LOCATIONS.

SEC. 64. The Clerks of the Courts of Common pleas and General Sessions in

57. Clerk to give public notice of liberation of prisoner, and assignment of property. Ib, 632, 18.
58. Fees allowed to Clerks for hearing petition for prison bounds. Ib., 634, 23.
59. Prosecutor to be discharged on his own recognizance in certain cases. 12, Stat., 636, 1.
60. Witnesses may be discharged in like manner. Ib., 636, 3
61. Penalty for failure to appear. Ib., 638, 2. 62. Clerk's costs. Ib., 636, 4.
63. Clerks to be ex officio Commissioners of Location. 11 Stat., 116, 49.
64. Oath of Clerk as Commissioner of Locations. Ib., 117 49. 1 Stat. 590, 1.

each County, shall be *ex officio*, Commissioner of Locations in such County.

SEC. 65. The Clerk, before entering upon the duties of his office, shall take and subscribe the following oath, viz: "I, A B, do swear, (or affirm,) that I will well and faithfully execute the office of Commissioner of Locations, for County, without giving a preference to any, through favor, fear, or reward, according to the best of my skill and ability: So help me God."

SEC. 66. The Commissioner of Locations shall be provided with a suitable case for papers, in which shall be filed, under appropriate letters or labels, the papers of his office, and with books of office, of good binding, by the County Commissioners. In one book shall be copied all warrants of survey granted: and in another, all returns thereon and plat certified, with an alphabetical index to each.

CLERK AS REGISTER OF DEEDS.

SEC. 67. That the Register of Mesne Conveyances, for Charleston County, shall be elected by joint ballot of both branches of the General Assembly, and hold office for four years, and until another shall be elected, commissioned and enter upon the duties of his office.

SEC. 68. That the Clerk of the Court of Common Pleas and General Sessions of each County in the State shall be Register of Mesne Conveyances for the same, except for the County of Charleston.

SEC. 69. That the Register of Mesne Conveyances in the County of Charleston, before entering on the duties of office, shall give bond, with three good sureties, to be approved by the County Commissioners, and of the form required by law, in the sum of five thousand dollars, to be lodged in the office of said County Commissioners; shall take the oath of office required by the Constitution, endorsed and subscribed on his commission, and enter the same, with the endorsement, on the records of the office; the said office of the Register for Charleston County to be kept at the fire-proof building in the city of Charleston; to be kept open from 9 o'clock A. M. to 3 o'clock P. M., every day, except Sundays, Christmas day and Anniversaries of American Independence.

SEC. 70. That a Deputy Clerk may act as Deputy Register of Mesne Conveyances: and, in those cases where the office shall be distinct, the Register of Mesne Conveyances may appoint a Deputy, in the same manner that Clerks of Courts are authorized to do.

SEC. 71. The Register of Mesne Conveyances is required to record, in well bound books, of the size not less than those denominated "Medium," kept for that purpose, in the order of the times at which they may be brought to his office, all marriage settlements, and all conveyances and mortgages, renunciations of inheritance and of dower; and other writings concerning the titles to lands situate in his County, which may be lodged with him to be recorded: *Provided*, That the execution of every such writing shall first be proved by affidavit of a subscribing witness, taken before some officer competent to administer an oath, or under a Commis-

65. Oath of Clerk as Commissioner of Locations. 11 Stat., 117, 50.

66. County Commissioners to provide books, etc. 11. Stat., 117, 53.

67. Register for Charleston to be elected by General Assembly. 5. Stat. 674.—6, Stat. 120, 1.

68. Clerk in all other Counties to be *ex officio* Register. Stat. 115.—44. Stat. 296. 18.

69. Bonds of Register, oath of office, and office hours. 11. Stat. 116. 48.

70. Deputy Clerk to act, or Register may appoint. Ib. 116. 46.

71. Register to record marriage Settlements, conveyances and mortgages, and certify same,—to have Indexes. Ib. 11. Stat. 115 45.

sioner authorized by law, or where the affidavit by a subscribing witness can not be had, by reason of death, insanity, or absence from the State of such witness that such fact be proved, together with the proof of the handwritings of the parties who signed, and of the subscribing witnesses; the proof, in every case, to be recorded with the writing; every such writing shall be recorded within one month after its lodgment, and the recording shall bear even date with the lodgment; on every such writing shall be endorsed a certificate, to be signed by the Register or his Deputy, specifying the time when, and book and page where, it was recorded; in the book, the names of the parties and nature of the writing shall precede the registry, and after it shall follow the date of the registry and a memorandum of the person to whom the original writing has been delivered. To the books of the registry, reference shall be had, by means of two indexes, each of which shall be in a separate book of the size denominated "Long Cap," both containing the year of the registry, names of parties, book and page; the alphabetical arrangement of one being according to the names of the parties who executed the writings, and of the other, according to the names of the parties to whom they were executed; each index embracing a number of volumes of registry, not less than ten.

SEC. 72. That the Register of Mesne Conveyances, or his Deputy, shall be required, on application, to give a certified copy of any writing recorded in his office, the fees for the same being first paid in advance, if required or tendered, as the case may be; or a certificate that no deed, conveyance, mortgage, or other transfer of any particular parcel of lands, or tenements by any particular person, is registered in his office; and if the Register, or his Deputy, shall furnish an incorrect transcript of any deed recorded, or an incorrect certificate, he shall forfeit and pay to the party the damages that may accrue in consequence thereof.

SEC. 73. Different sets of books shall be provided by the Clerks of the several Counties for the recording of deeds and mortgages; in one of which sets, all conveyances, absolute in their terms, and not intended as mortgages, or as sureties in the nature of mortgages, shall be recorded; and in the other set, all such mortgages, or sureties in the nature of mortgages, shall be recorded.

SEC. 74. Each County Auditor shall keep a record of all sales or conveyances of real property made in his County, in which he shall enter, in columns, the names of the purchaser and seller, the quality of land conveyed, the location and price of the same, and therefrom correct the County duplicates annually; and, for the purpose of carrying out this provision, the Clerks of Courts and Registers of Mesne Conveyances of each County are hereby required to have the endorsement of the County Auditor on each and every deed of conveyance for real property that the same is on record in his office, before the same can be placed on record in the offices of said Clerks of Courts or Registers of Mesne Conveyances, and the said County Auditor shall be entitled to collect a fee of twenty-five cents, for his own use, for making such entry and endorsement.

SEC. 75. That every conveyance of real estate, within this State, hereafter made, shall, within thirty-three days, be recorded in the office of the Clerk of the County in which such real estate shall be situated, except in the County of Charleston, where all such conveyances shall be recorded, within the same time, in the office

72. Clerks to give certified copy of record on application—penalty for making incorrect transcript. Ib. 116. 47. 255. 2, Stat. 6.—2.

73. Different books to be used for conveyances and mortgages 15. Stat. 6. 2.

74. Registers not to record conveyances till entered in Auditor's office—penalty. Gen. Stat. 69. 88.

75. Time allowed for registry of deeds—consequence of failur to record 15, Stat., 8.

of the Register of Mesne Conveyance; and every such conveyance, not so recorded shall be void, as against any subsequent purchaser, in good faith, and for a valuable consideration, of the same real estate, or any portion thereof: *Provided*, Such subsequent purchaser shall have first recorded his said conveyance.

SEC. 76. That the holders of all certificates or titles issued by or under the authority of the United States Direct Tax Commissioners for South Carolina, shall be allowed to record the same in the office of the Register of Mesne Conveyances for the County of Beaufort; and when such certificates shall have been so recorded, such recording shall be deemed to be a legal notice of title to the land described in the same.

SEC. 77. When real estate is attached, a true and attested copy of such attachment, together with a description of the real estate attached, shall be, by the officer serving the same, delivered to the party whose real estate is attached, or left at his last and usual place of abode; and the officer making such service shall also leave a true and attested copy of such attachment, together with a description of the real estate so attached, in the office where, by law, a deed of such real estate is required to be recorded; and, if the party whose estate is attached does not reside in this State, then such copy shall be delivered to his tenant, agent or attorney, if any be known; and, if no such agent, tenant or attorney be known, then a copy of such warrant of attachment, with the officer's return thereon, lodged in the office where, by law, a deed of such real estate ought to be recorded, shall be deemed sufficient service. It shall be the duty of the Clerk or Register of the office wherein said warrant of attachment is required to be lodged, to receive the same, and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded, and the officer's return thereon. Said attachment shall be a lien, subject to all prior liens, and bind the real estate attached from the date of lodgment: *Provided*, That all attachments lodged upon the same day shall take rank together.

SEC. 78. That all persons representing publicly, for gain or reward, any play, comedy, tragedy, interlude or farce, or other entertainment on the stage, or any part therein, all fortune tellers, and those who exhibit wax figures, or show, of any kind whatsoever, shall pay a tax of three dollars per day, when they make those exhibitions at the towns or villages that are not incorporated; and the said sum of three dollars shall be paid into the hands of the Clerks of the Circuit Courts, respectively, who shall be bound to pay over the same into the County treasury, annually.

If any person who is required to pay the aforesaid tax, shall neglect to do so before such representation or exhibition, it shall be the duty of the Clerk of the Court, or any Trial Justice, for the County where the same may be done, to issue an execution for double the amount of tax so imposed, which execution may be directed to any Sheriff or Constable of this State, and against the body and goods of the person so being liable, and which may be levied in any County in this State; and every Trial Justice who shall so issue execution, shall cause the amount of the same to be paid to the Clerk of the Court for his County; and the Clerks of Courts shall pay, annually, into the County treasury, all such taxes as may come into their hands, respectively: *Provided*, That nothing herein contained shall be construed to extend to any incorporated town, village or city.

76. U. S. certificates of sale in Beaufort County—to be recorded. 14. Stat. 14.

77. Register to keep book of "Liens of attachment." Gen. Stat. 572 255.

78. Clerks to issue execution for tax against players and shows. 5. Stat: 711. 35.

SEC. 79. The Clerk shall keep among the records of the Court a book for the entry of judgment, to be called the "Judgment Book."

SEC. 80. Unless the party or his attorney shall furnish a judgment roll, the Clerk, immediately after entering the judgment, shall attach together and file the following papers, which shall constitute the judgment roll.

In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

In all other cases, the summons, pleadings or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment.

A transcript of a final judgment, directing, in whole or in part, the payment of money, may be docketed with the Clerk of the Court of Common Pleas in any other County, and, when so docketed, shall have the same force and effect as a judgment of that Court.

SEC. 81. The Clerk shall insert in the entry of judgment, on the application of the prevailing party, upon five days' notice to the other, except when the attorneys reside in the same city, village, or town, and then, upon two days' notice, the sum of the allowances for costs, as provided by this Code, the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of Commissioners in taking depositions, the fees of referees, and the expense of printing the papers for any hearing, when required by a rule of the Court. The disbursements shall be stated in detail, and verified by affidavit. A copy of the items of the costs and disbursements shall be served, with a notice of adjustment.

SEC. 82. The notice of appeal must, within the same time, be served on the Trial Justice personally, if living and within the County, or on his Clerk if there be one, and on the respondent personally, or by leaving it at his residence, with some person of suitable age and discretion; or in case the respondent is not a resident of such County, or cannot, after due diligence, be found therein, in the same manner on the attorney or agent, if any, who is a resident of such County, who appeared for the respondent on the trial; and, if neither the respondent nor such agent or attorney can be found in the County, the notice may be served on the respondent, by leaving it with the Clerk of the appellate Court; and the appellant must, at the time of the service of the notice of appeal on the Trial Justice, or on his Clerk, as herein provided, pay to such Trial Justice or Clerk the costs of the action included in the judgment, together with two dollars costs of the return, which shall be included in the judgment for costs on reversal. The appellant shall also execute, on the appeal, a written undertaking on his part, with one or more sufficient sureties, to the effect that the appellant will pay all costs, disbursements and extra costs, awarded against him in the Court below, if such judgment shall be affirmed by the appellate Court, on such appeal, together with all costs and damages which may be awarded against him thereon; such sureties to justify in double the

79. Clerks to keep Judgment Book. Code 588. 373.

80. To make up Judgment Roll;—of what it shall consist;—transcript may be filed in any other County. Id. 592. 335.

81. Clerks to insert costs in judgment. Id. 597. 337.

82. Duty of Clerks on appeal filed from Trial Justices Court. Id. 693. 371. 376. 551.

amount specified in the undertaking; such undertaking and the sufficiency of the sureties to be approved by the Trial Justice of the Court below, or the appellant may deposit, with the Clerk of the Court of Common Pleas, the costs, disbursements, and extra costs included in the judgment in the Court below, and the sum of fifteen dollars, to meet costs that may be awarded against him on such appeal; the undertaking, when executed and approved, to be filed with the Clerk of the Circuit Court; the amount so deposited shall be repaid by the said Clerk to the appellant, if he succeed on the appeal; and, in case the judgment be affirmed, the said Clerk shall, after the execution is issued, pay over the amount so deposited to the respondent, which shall be credited on the execution issued on the judgment of affirmance, to the extent thereof, and the balance, if any, on the execution issued on the judgment appealed from.

When, by reason of the death of a Trial Justice, or his absence from the County, or any other cause, the notice of appeal cannot be served, as provided by Section 370, it may be served by leaving the same with the Clerk of the County.

If a return be made, and the appeal is from a judgment where a new trial may not be had, as provided by this Chapter, it may be brought to a hearing, upon notice by either party of not less than eight days. It shall be placed upon the calendar, and continue thereon without further notice, until finally disposed of. But if neither party bring it to a hearing before the end of the second term, the Court shall dismiss the appeal, unless it continue the same by special order, for cause shown. If the appeal is from a judgment where a new trial may be had, it may be brought to a hearing or trial at any term of the Court at which a petit jury shall be summoned to attend. At least ten days before the Court, the party desiring to bring on the appeal shall serve a note of issue on the Clerk, and the Clerk shall thereupon enter the cause on the calendar, according to the date of the return.

SEC. 83. The statement in a case of judgment by confession, may be filed with a County Clerk, who shall endorse upon it, and enter in the Judgment Book, a judgment for the amount confessed, with five dollars costs, together with disbursements. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll. Executions may be issued and enforced thereon, in the same manner as upon judgments in other cases in such Courts. When the debt for which the judgment is recovered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but shall have endored thereon, by the attorney or person issuing the same, a direction to the Sheriff to collect the amount due on such judgment, with interests and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due; and whenever any further installments become due, execution may, in like manner, be issued for the collection and enforcement of the same.

SEC. 84. The various undertakings required to be given by this Code of Procedure must be filed with the Clerk of the Court, unless the Court expressly provides for a different disposition thereof, except that the undertakings provided for by

83. Confession of judgment before the Clerk. Gen. Stat., 612, 401.
84. Undertakings, generally, to be filed by Clerk. I. 620. 438.

the Chapter on the claim and delivery of personal property, shall, after the justification of the sureties, be delivered by the Sheriffs to the parties, respectively, for whose benefit they are taken.

SEC. 85. Whenever the Judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the Clerk of the Court of Common Pleas of the County where the judgment roll in the action, or transcript from Trial Justice's judgment, upon which the proceedings are taken, is filed; and the said Clerk shall record the order in a book, to be kept for that purpose in his office, to be called "Book of Orders Appointing Receivers of Judgment Debtors," and shall note the time of the filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order, as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the Court in which the judgment was obtained, or docketed, upon which the proceedings are founded.

But before he shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded in the office of the Register of Mesne Conveyances of the County in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the Register of Mesne Conveyance of the County in which such judgment debtor resides.

SEC. 86. In any action arising on contract for the recovery of money only, the plaintiff may file with the Clerk proof of personal service of the summons and complaint on one or more of the defendants, or of the summons, according to the provisions of Section one hundred and fifty-three, and that no answer has been received. The Clerk shall thereupon enter judgment for the amount mentioned in the summons, against the defendant, or defendants, or against one or more of several defendants, in the cases provided for in Section one hundred and fifty-nine. But if the complaint be not sworn to, and such action is on an instrument for the payment of money only, the Clerk, on its production to him, shall assess the amount due to the plaintiff thereon; and in other cases shall ascertain the amount which the plaintiff is entitled to recover in such action, from his examination, undersath, or other proof, and enter the judgment for the amount so assessed or ascertained. In case the defendant give notice of appearance in the action, he shall be entitled to five days' notice of the time and place of such assessment.

SEC. 87. When an officer holding an execution for collection shall be directed by the creditor, his agent or attorney, to levy the same on the real estate of the debtor, he may lodge in the office where, by law, a deed of such real estate is required to be recorded, a certified copy of such execution, with a certificate thereon, under his hand, stating that he is directed to levy the same on such real estate, substantially describing the same. The real estate thus described shall be held to satisfy such execution, for the term of one hundred and twenty days from the time of lodging the copy thereof; and when encumbered by previous attachments, or liens, the lien thus created shall remain, after the removal of such prior encumbance or lien, one hundred and twenty days.

85. Clerks to enter certain orders in "Book of orders appointing receivers." Ib. 592. 324.

86. Clerks to enter up judgment by default in certain cases. Ib. 577, 269.

87. Clerks to enter officers' return of lien on executions, in book kept for purpose which shall bind property for 120 days. Ib. 589.—314.

The Register of Mesne Conveyance shall keep a record of such copy in the same manner as attachments on mesne process.

SEC. 88. The execution shall be returnable, within sixty days after its receipt by the officer, to the Clerk with whom the record of judgment is filed If the first execution is returned unsatisfied, in whole or in part, another execution, as of course, may be issued at any time within the period limited by this Code of Proceedure for issuing executions.

SEC. 89. When judgment shall have been rendered in a Court of a Trial Justice or other inferior Court in a city, and docketed in the office of the Clerk of the Circuit Court, the application for leave to issue execution must be to the County Court of the County where the judgment was rendered.

SEC. 90. Whenever an action may be settled or determined, at the mutual cost of parties, or discontinued by the plaintiff, or the judgment shall be for the defendant, the Clerk of Court, Register of Mesne Conveyances, Commissioner of Locations, Judge of Probate, or Sheriff, shall have power to issue execution for his costs; or the Clerk may issue for the whole, directed to the Sheriff, who is authorized and required to execute such process, as in other cases of execution delivered to him.

SEC. 91. Any person to whom a debt is due for labor performed or furnished, or for materials furnished, and actually used in the erection, alteration or repair of any building or structure upon any real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner, in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this Chapter, except as is provided in the following Sections.

SEC. 92. The lien may be enforced by petition to the Court of Common Pleas in the County where the building or structure is situated. The petition may be filed in term, or in the Clerk's office in vacation, and the date of the filing shall be deemed the commencement of the suit.

SEC. 93. Such lien shall be dissolved, unless the person desiring to avail himself thereof, within thirty days after he ceases to labor on, or furnish labor or materials for, such building or structure, files in the office of the Clerk of the Court of Common Pleas of the County in which the same is situated a statement of a just and true account of the amount due him, with all just credits, given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and shall be recorded in a book kept for the purpose by the Clerk, who shall be entitled to the same fees therefor as for recording mortgages of equal length.

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88. Clerks to issue second execution after first returned unsatisfied. Ib. 690, 315.
89. Clerk to docket judgment of Trial Justices and issue execution upon the same. Ib. 338, 307.
90. Clerks may issue execution for costs, when case is settled. 14 Stat., 17, 3.
91. Party furnishing materials and labor, to have lien on buildings and land. 14 Stat., 220, 1.
92. Lien how enforced. Ib. 220, 8.
93. Lien to be dissolved, unless Statement be filed in Clerks office. Ib. 220, 5.

SEC. 94. If any person or persons shall make any advance or advances, either in money or supplies, to any person or persons who are engaged, or are about to engage, in the cultivation of the soil, the person or persons so making such advance or advances shall be entitled to a lien on the crop which may be made during the year upon the land, in the cultivation of which the advances so made have been expended, in preference of all other liens existing or otherwise, to the extent of such advance or advances: *Provided* An agreement in writing shall be entered into before such advance is made, to this effect, in which shall be specified the amount to be advanced, or in which a limit shall be fixed beyond which the advances, if made from to time during the year, shall not go, which agreement shall be recorded in the office of the Register of Mesne Conveyance for the County in which the person to whom the advances are made resides, within thirty days from its date.

SEC. 95. If any person making such advances shall make an affidavit before the Clerk of the Court of the County in which such crop is, that the person to whom such advances have been made is about to sell or dispose of his crops, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be lawful for him to issue his warrant, directed to any of the Sheriffs of this State, requiring them to seize the said crop, and, after due notice, sell the same for cash, and pay over the net proceeds thereof, or so much thereof as may be necessary, in extinguishment of the amount then due: *Provided, however*, That if the person to whom such advances have been made shall, within thirty days after such sale has been made, give notice, in writing, to the Sheriff, accompanied with an affidavit to this effect: That the amount claimed is not justly due—that then it shall be the duty of the Sheriff to hold the proceeds of such sale, subject to the decision of the Court, upon an issue which shall be made up and set down for trial at the next succeeding term of the Court of Common Pleas for the County in which the person to whom such advances have been made resides, in which the person making such advances shall be the actor.

SEC. 96. On the return of any inquest of supposed escheated lands by the escheator, into the office of the Clerk of the Court where the lands lie, he shall thereupon cause to be advertised, in a newspaper of the County, or other nearest gazette, the first week in every month, for six months, a notice containing a particular description of the lands, the name of the person last seized, and the supposed time of his or her death, together with the part of the world in which he or she was supposed to have been born, and requiring his or her heirs, or others claiming under him or her, to appear and make claim. If no person shall appear and claim the same within twelve months after the expiration of the time prescribed for advertising, the said Clerk shall issue process, to be signed by the Judge of the Circuit Court of the said County, to the escheator, pronouncing the said lands escheated and vested according to law, and directing him forthwith to sell and convey the same upon the usual notice.

SEC. 97. That so much of the Act entitled "An Act to further amend an Act entitled 'An Act providing for the assessment and taxation of property,'" passed March 8, 1871, as provides that all deeds of conveyances of real estate shall be

94. Liens on crops to secure advances.—Agreement to be recorded in Clerk's office. 13 Stat. 389. 1.

95. In case of attempt to defeat liens, powers of Clerk. Ib. 2.

96. Supposed escheated lands to be advertised by Clerk. 5 Stat. 47, 3—11 110, 24.

97. Penalty for recording conveyance not entered in Auditor's office. 15 Stat. 164.

placed on record in the office of the County Auditor before the same can be placed on record in the office of the Register of Mesne Conveyances, be, and the same is hereby, amended by adding the following, viz: And for each and every violation of this provision by a Clerk of Court or Register of Mesne Conveyances, he shall, upon conviction, before any Court of competent jurisdiction, be fined in a sum of not less than five dollars, nor more than twenty dollars, and the costs of the action; one half of said fine to be paid into the County Treasury for the benefit of the County, and the other half to be paid to the County Auditor.

SEC. 98. There shall be established in the County of Charleston an Inferior Court for the trial of criminal cases, to be called the Criminal Court of Charleston County, and which shall be organized by the Judge thereof, immediately after his election. The Clerk of the Court of Common Pleas and General Sessions, and the Sheriff of the County, shall, respectively, be the Clerk and Sheriff of the Criminal Court, and may act in person or by deputy. All prosecutions shall be conducted by the Attorney General or the Solicitor of the Circuit to which the County of Charleston may be attached. These officers shall receive the same fees as are now provided by law, and the Judge of the Criminal Court shall approve their bills for services rendered in the said Court in the same manner, and in like cases, as Judges of the Circuit Courts are now required by law.

SEC. 99. All moneys which shall be paid into the Circuit or Probate Courts of the State, or received by the officers thereof in causes pending therein, shall be immediately deposited in some incorporated State bank or National bank within the Circuit, of good credit and standing: or, if there be no such bank within the Circuit, then in such bank nearest to the place of holding the Court, in the name, and to the credit of the Court.

No money deposited as aforesaid shall be drawn from said banks, except by order of the Judge of said Courts, respectively, in term or in vacation; to be signed by such Judge, and to be entered and certified of record by the Clerk; and every such order shall state the cause in or on account of which it is drawn; *Provided*, That money paid into Court to be immediately paid out need not be so deposited, but shall be paid upon order of the Court.

If any Clerk of such Courts, or other officers thereof, having received such moneys, as aforesaid, shall refuse or neglect to obey the order of such Court for depositing the same, such Clerk or other officer shall be forthwith proceeded against by attachment for contempt.

SEC. 100. No marriage settlement shall be valid until recorded in the office of the Secretary of State, and in the office of the Register of Mesne Conveyances of the County where the parties reside: *Provided*, That the parties shall have three months to record the same, and, if not recorded within three months, the same shall be null and void.

SEC. 101. The Courts of Common Pleas shall, at the expense of the State, have a seal for each County of an impression similar to that of the Court of Common Pleas in Charleston County, and uniform with that seal; except that each seal shall in the legend have the name of the Court in which it is used. The said seals

98. Inferior Criminal Court for Charleston; Clerk of Common Pleas to be Clerk of same. Ib. 187.

99. Money paid into Court to be deposited;—How drawn; Clerk not depositing to be proceeded against. 14 Stat., 16.

100. Marriage Settlement must be recorded within three months, 6 Stat., 213.

101. Seal of Court of Common Pleas. 5 Stat., 211.

shall always be affixed to such proceedings of the said respective Courts as may require the same.

SEC. 102. Upon receiving a verdict, the Clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon or an order that the cause be reserved for argument or further consideration. If a different direction be not given by the Court, the Clerk must enter judgment in conformity with the verdict.

SEC. 103. The Clerk and Sheriff of the City Court of Charleston, shall have the same power and authority, in all cases within the jurisdiction of the said Court, as the Clerks and Sheriffs of the Circuit Courts, and may charge like fees as are chargeable in Circuit Court in like cases. All writs and processes shall be issued by the Clerk of the said Court, and shall be made returnable to the first day of the term, next succeeding the issuing of the same; and all judgments in the office of the Clerk of the said City Court, and all executions, writs and processes in the office of the Sheriff of the City of Charleston, other than judgments, executions and processes issuing under the Ordinances of the City Council, shall be transferred respectively, to the office of the Clerk of the Circuit Court, and of the Sheriff of the County of Charleston, which causes, judgments, executions, writs and processes shall be of like validity and force as if the same had originated or been sued out of the Circuit Court for the same County.

SEC. 104. If any Clerk of the Court of Common Pleas and General Sessions, or Sheriff, or Judge of Probate, or Regester of Mesne Conveyances, in this State, shall willfully fail or neglect to discharge all the duties and perform all the services which are required of him by law, in addition to his liability to the party aggrieved, he shall be liable to be indicted as for a misdemeanor, and, upon conviction thereof, shall be fined, at the discretion of the Court, not exceeding five hundred dollars.

SEC. 105. The word "Clerk," as used in this Code of Procedure, signifies the Clerk of the Court where the action is pending, and in the Supreme Court, the Clerk of the County mentioned in the title of the complaint, or in another County to which the Court may have changed the place of trial, unless otherwise specified.

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102. Entry of verdict in Clerk's minutes. Code 582, 238.

103. Clerk of City Court, Charleston to have like powers with Clerks of Common Pleas. Code, 457, 458.

104. Neglect of of official duty by Clerk, how punished. 6 Stat., 577, 1.

105. Definition of "Clerk." Gen. Stat., 627. 470.

CHAPTER VI.

OF THE

OFFICE, POWERS AND DUTIES OF SHERIFFS.

SEC. 1. There shall be a general election for the election of County Sheriffs held in each County, on the first Tuesday after the first Monday in November, A. D. 1876, and on the same day in every fourth year thereafter.

SEC. 2. That in the event that a vacancy shall, at any time, occur in the office of Sheriff, in any County of this State, whether from death, resignation, disqualification, or other cause, the Governor shall have full power to appoint some suitable person, who, upon duly qualifying, according to law, shall be entitled to enter and hold the office for the unexpired term of the former incumbent, and shall be subject to all of the duties and liabilities incident to said officer, during the term of his service in said office: *Provided*, That no such unexpired term for which an appointment is made shall, in any case, exceed one year.

SEC. 3. That the Coroner, during the continuane of such vacancy, and until the office is filled by appointment or election, shall assume the office, discharge its duties, incur its liabilities, and be entitled to its fees and emoluments; and shall, for such purpose, take charge of the books and papers of the office, and occupy the apartment allowed to the Sheriff for transacting the business of his office.

1. Election of Sheriff. 14 Stat., 338. 1.—16th., Amendment.
2. Vacances in Sheriff's office, how filled. Ib. 374, 1.
3. Coroner to act, in case of vacancy. 11, Stat., 78, 42.

SEC. 4. That, in case of vacancy in the office of Sheriff, and until the Coroner for such County may take charge of the same, or until a Sheriff shall be elected and commissioned for such County, the Clerk of the Court for such County shall take possession of the jail of such County, and charge of the prisoners confined therein, and, also, possession of the Sheriff's office, and the papers therein.

SEC. 5. If the Sheriff shall be a party plaintiff or defendant in any judicial process, execution, warrant, summons or notice to be served or executed within his County, the Coroner shall serve the same, and incur the liabilities of the Sheriff.

SEC. 6. When any person shall be declared duly elected to the office of Sheriff, he shall be bound to file in the office of the County Commissioners, his bond, duly executed and approved within thirty days from the time the election is declared.

SEC. 7. The Sheriffs of the several Counties, before receiving their commissions, shall enter into bonds, to be executed by them, and any number of sureties, not exceeding twelve, nor less than two, to be approved by a majority of the Board of County Commissioners, in the sum of ten thousand dollars, except in the County of Charleston, where the bond of the Sheriff shall be in the sum of twenty-five thousand dollars; and every Sheriff shall procure other satisfactory security when duly required.

SEC. 8. Every surety to the bond of a Sheriff shall be liable for the whole penal sum therein expressed; nor shall any return of *nulla bona* on any execution against the Sheriff be henceforth necessary before legal resort may be had against his sureties, or any of them: *Provided*, That there shall be liabilities to contribution among the sureties aforesaid, as in cases of joint suretyship.

SEC. 9. Every Sheriff, before entering on the duties of his office, in addition to the oath required by the Constitution to be taken by every person chosen or appointed to any office of profit or trust, shall take the following oath: "I, A B, swear, (or affirm, as the case may be,) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected; and I will not, directly or indirectly, sell or dispose of the said office, or the profits thereof, but will resign, or continue to discharge the duties thereof during the period fixed by law, if I so long live: So help me God;" and an oath to enforce the law against gaming, as follows: "I, A B, do solemnly swear, (or affirm) that in the execution of the office of Sheriff to which I have been elected, I will, to the extent of my ability, enforce the penalties prescribed by law against gaming and the keeping of gaming tables, and will not fail to bring to justice all violations of the same that may come within my view or knowledge: So help me God;" which oaths shall be endorsed on the commission, and shall be taken and subscribed by the Sheriff before the Clerk of the County, and, at the next term of the Circuit Court in the County, he shall produce his commission, which shall be read in open Court, and recorded in the Journal of the said Court.

SEC. 10. No Sheriff, Deputy Sheriff, or Sheriff's Clerk, during the time he is in any such office, shall act as an attorney at law, or solicitor in equity, in his own name, or in the name of any other person, or be allowed to plead or practice in

4. Clerk to act, till Coroner takes charge, or vacancy is filled. Ib. 113. 39.
5. Coroner to act when Sheriff is interested. Ib. 78. 41—7 Stat., 215, 9.
6. Sheriff to file bond, within thirty days. 11 Stat., 25, 1.
7. Amount of Sheriff's bond; number of sureties. 14 Stat., 19, 1; 11, 26, 1.
8. Liability of sureties. 11 Stat., 291, 4.
9. Oaths to be taken by Sheriffs. Ib. 38, 2.—6. 27, 3.
10. Sheriffs not to act as attorneys or Clerks. 11 Stat., 41, 9.

any of the Courts in this State' nor shall he hold the office of Clerk of the Court of Common Pleas and General Sessions.

SEC. 11. That the Sheriff of any County may appoint one or more deputies, to be approved by any Judge of the Court of Common Pleas of such County ; and the oath which such Deputy is required to take by the thirteenth Section of this Chapter may be administered by any officer authorized to administer oaths within such County.

SEC. 12. That the appointment of every such Deputy shall be evidenced by a certificate thereof, signed by his principal, and shall continue during the pleasure of the principal; and every principal may take such bond and security from his Deputy as he shall deem necessary to secure the faithful discharge of the duties of his appointment, and the principal shall, in all cases, be answerable for neglect of duty or misconduct in office of his Deputy.

SEC. 13. That every such Deputy shall, previous to entering on the duties of his appointment, take an oath or affirmation, as prescibed by the Constitution of the State, faithfully to perform all the duties of his appointment ; and, when so qualified, the Deputy may do and perform any and all of the duties appertaining to the office of his principal.

SEC. 14. The Sheriffs of the several Counties throughout this State shall keep their several offices in the city, town, village or place where the respective Court houses are established, and in the Court house, if there be one.

SEC. 15. The Sheriff of every County shall keep and preserve as public records in his office the following separate books, of good material and strongly bound, each containing not less than eight quires of medium paper, and labelled with its appropriate title, to wit:

1. "Writ Book," in which the Sheriff, immediately on the receipt of any writ of *habeas corpus*, citation, writ of *capias ad respondendum*, summons, subpœna writ, subpœna ticket, rule, interrogatories, or notice to be served upon any person, *subpœna ad respondendum*, writ of *ne exeat*, injunction, warrant, attachment, or any other mesne process whatever, issuing from either of the Circuit or Probate Courts, shall make an entry thereof, with the date, and endorse on the original the time of such entry in his office. The Writ Book shall be laid off into separate and suitable columns, in which the Sheriff shall enter the names of the parties, the name of the attorney, the kind of process, the kind of action, or kind of offence, when entered, by whom served, how served, when served, or other return, and Sheriff's costs ; and the Sheriff shall make a true index in the said book to all the entries therein.

2. "Execution Book," in which the Sheriff, immediately on the receipt of any *fieri facias*, *capias ad satisfaciendum*, attachment for not performing decree, writ of *habere facias possessionem*, restitution, military, or other execution, or any other final process whatever, (which, according to law, may be lodged with him,) shall enter the same, and endorse on such final process the time of such entry in his office. The Execution Book shall be laid off into separate and suitable col-

11. Sheriff's may appoint deputies. 14. Stat., 332, 1.

12. Certificate of appointment of deputy. Ib. 332, 2.

13. Oaths of deputies, and their duties. Ib. 332, 3.

14. Where Sheriff's office to be kept. 11 Stat., 39, 5.

15. Books to be kept by Sheriff's. Writ Book. Execution Book, Sales Book. Ib. 39, 6, 11, 8 Rich., 267.

umns, in which the Sheriff shall enter the kind of process, when lodged, and the time of the original entry, the names of the parties, the debt and interest, and (underneath, in the same column,) the attorney's, Clerk's, Sheriff's, and other costs, attorney's name, the amount received, rate of levy or other return, or disposition of the execution, and receipts of plaintiff, attorney, Clerk, Sheriff, witnesses, or others entitled to costs, or their agents or representatives, and the Sheriff shall make and keep correct and double indexes in the said book, of the cases entered therein.

3. A "Sale Book," in which the Sheriff shall enter all sales which he may make under any order, decree, execution or final process, of any of the Courts of this State, or of any officer authorized by law to issue such process to the Sheriffs of this State, and he shall transcribe therein all levies which he shall have made, (specifying the property and the date of each levy,) and all advertisements of property levied on; and the parts of the said book in which accounts of sales shall be kept shall be divided into separate and suitable columns, in which the Sheriff shall enter the names of the parties, a description of property sold, when sold, to whom sold, amount of sale, and, if bond be taken, the names of the sureties thereto, and statement of the time when due, and to what case or cases the proceeds of such sale have been applied, or to whom paid; and the Sheriff shall make and keep correct and double indexes in the said book, of the cases entered therein. The Sheriff shall keep the mesne and final processes in his office, in suitable boxes, and in separate apartments. Final process shall be arranged alphabetically in the defendants' names, in boxes labelled with appropriate letters. The miscellaneous papers shall be arranged under suitable titles and labels, such as "Attachment Bonds," "Bail Bonds, "Bonds for the delivery of property," "Money Bonds," &c.

SEC. 16. It shall be the duty of every Sheriff to turn over to his successor all the furniture appertaining to his office, the original writ book, and sale book, and also the original execution book, or a correct certified copy thereof, and also all original bonds officially taken by him, all mesne processes not served, and all final processes partially or wholly executed; and if any Sheriff be dead, his personal representative shall so turn over the matters aforesaid; and the successor shall be bound to execute a receipt and duplicate, to be lodged in the Clerk's office, specifying the matters and things so received by him, and he shall be responsible for them. The retiring Sheriff, or his successor, neglecting or refusing obedience to the requisitions herein, shall, respectively, upon conviction by indictment, be liable to a fine of one thousand dollars, or an action may be instituted upon the official bond of any defaulting Sheriff in this behalf, for the penalty aforesaid. And it shall be the duty of such predecessor, who has levied upon personal property and not sold it, to deliver it to his successor at the time of turning over such books, bonds and processes, taking his receipt for the same, who is authorized to sell such property.

SEC. 17. The Sheriff shall summon the requisite number of Constables to attend the Courts of Common Pleas and General Sessions, and provide a staff for each of them, and shall make a return of such summons to the Clerk of the Court.

SEC. 18. The Sheriffs, or their lawful Deputies, shall attend all the Circuit Courts that may be held within their respective Counties, and enforce such rules

16. Sheriffs to turn over to successors books, papers and furniture. 11 St t., 40 7.—12 788.
17. Sheriffs to summon Constables. Ib, 45, 22.

as the said Courts may establish; and during term time of the said Courts, the Sheriff or his Deputy shall serve any rule of such Court or writ of attachment, for any contempt thereof, on any party or witness in any part of this State; and the party moving for the same shall be liable to pay such Sheriff the costs in cash for such service, on the return of such rule or writ of attachment.

SEC. 19. The Sheriff, or his regular Deputy, shall serve, execute, and return every process, rule, order or notice, issued by any Court of record in this State, or by other competent authority; and if the Sheriff shall make default herein, he shall be subject to rule and attachment as for a contempt, and he shall also be liable to the party injured, in a civil action.

SEC. 20. If any Sheriff or Deputy Sheriff, without warrant or process, shall summon any one, by arresting the person or attaching the goods, to appear in any of the Courts in this State, (not having at that time any process to justify the same, upon complaint thereof, on oath, such Sheriff or Deputy shall be liable to be punished for a contempt, by either the Court of Common Pleas or General Sessions for his County: *Provided*, That nothing herein contained shall prevent the Sheriff or his Deputy from arresting any person for treason, felony, or breach of the peace, committed in his presence, or from arresting any person for treason or felony, upon probable and reasonable grounds.

SEC. 21. No person shall be arrested while actually engaged in or attending military or militia duty, or going to or returning from the same, nor while attending, going to, or returning from any Court, as party or witness, or by order of the Court, except for treason, felony or breach of the peace: but in such case process may be served without actual arrest of body or goods.

SEC. 22. No civil or criminal process shall be served on Sunday, except for treason, felony, or breach of the peace. Nor shall any female be arrested in any civil action, except for a wilful injury to person, character or property.

SEC. 23. It shall be lawful for the Sheriff, Deputy Sheriff, or Jailor, to retake on Sunday, as on any other day, and at Court, muster or any other place, any prisoner who has escaped.

SEC. 24. The Sheriff, or his Deputy, shall arrest all persons against whom process for that purpose shall issue from any competent authority, commanding such person to be taken into custody, or requiring him or her to give bond, with security; and if the party so arrested, being entitled to bail, shall give it, or shall give the bond with security required, such person shall be enlarged; and if not, he, or she, shall be kept in custody until discharged from confinement, according to law.

SEC. 25. No Sheriff shall take any attorney at law, or any officer of Court, as bail for any person whomsoever, in any civil or criminal case.

SEC. 26. Every bail bond shall be payable to the Sheriff or his successors in office, and may be assigned to the plaintiff.

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18. Sheriff's to attend Court, return rules. Ib. 44, 22.
19. Duties and liabilities of Sheriff's. Ib. 41, 10.—5 571 7.—7 209, 11 Code, 434.
20. Liability for illegal arrest. 11 Stat., 41, 11. Con. Art. 2, 17 Art. 8, 6.
21. Pesons not to be arrested while performing Military duty. 11 Stat., 41, 13.
22. When and how to serve process. Female not to be arrested. Code 202.
23. Escaped prisoner to be retaken on Sunday. 11 Stat., 45, 27.
24. Sheriff's power to arrest and to take bail. Ib. 42, 13.
25. To whom bail bond to run. Ib. 42, 14.
26. Sheriff's not to take attorneys or offices of Court as bail. Ib. 45, 24.

SEC. 27. That the Sheriff, on pain of being attached and amerced, shall, at the time he returns *capi corpus* on any *mesne* process of any of the Courts, to him directed, indorse on the back of such process the name or names of such person or persons as shall have become bail for the defendant, if the said defendant shall have been let to bail.

SEC. 28. It shall be lawful for the Sheriff, or his Deputy, to break and enter any house (after request and refusal,) to arrest the person or to seize the goods of any one in such house, provided such Sheriff, or his Deputy, have process requiring him to arrest such person or seize such goods.

SEC. 29. It shall be the duty of the Sheriff of every County in this State, on the receipt of any money in his office on account of any plaintiff in execution, or other person entitled thereto, within one month, to give notice, in writing, of the same, to such plaintiff or his attorney, or other person entitled to the same, by personal service, or through the post office; and, on failure so to do, he shall be liable to pay interest for the money in his hands, at the rate of five per cent. per month, till such notice is given.

SEC. 30. No Sheriff shall be liable to be served with any rule to show cause, or attachment, at any time after two years from the expiration of his office.

SEC. 31. Any Sheriff shall be liable to be proceeded against in any Court of Record in this State, for an open contempt, or for a breach of offical duty. For an open contempt he shall be liable to be attached forthwith; and for a breach of official duty he may be required, by rule, to answer to the complaint of any suitor of the Court, and, upon failing, to answer or comply with the order of the Court, made on hearing of said rule, he shall be liable to be attached as for a contempt, and committed to close custody, until he shall have complied with the requisition of the Court: *Provided*, That, in all cases, interrogatories may be propounded to him, which he shall answer on oath, orally or in writing, as the Court may order.

SEC. 32. If any Sheriff shall fail to execute, or return, final process in any civil suit, or to pay over money, when demanded, that has come into his hands as Sheriff to the party entitled thereto, and shall be unable, on the return of the rule that may be issued against him, to show sufficient cause, he shall be liable to be attached for a contempt, and committed to custody until he shall comply with the order of Court.

SEC. 33. If any Sheriff shall be attached for contempt, for failing to execute, or to return final process, in any civil suit, or for not paying over, to the party entitled, money which has come into his hands as Sheriff, and shall remain in contempt for the space of thirty days after such attachment ordered, every such Sheriff shall be deemed guilty of official mis-conduct, and shall be liable to be proceeded against by indictment, and, on conviction, be liable to fine not exceeding one thousand dollars, and imprisonment not exceeding one year, and be removed from office: *Provided*, That nothing herein contained shall be construed to deprive any such Sheriff of his right to appeal from any order against him for a contempt, nor shall the provisions of this Chapter be taken to apply during the pendency of such appeal, nor until the same has been finally dismissed.

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27. Names of sureties to be indorsed on process. Ib.—Code. 215.

28. Lawful to break into house in certain cases. Ib. 43. 16—Code, 217.

29. Sheriff's to notify party interested of money in his hand; penalty for neglect. 12 Stat., 534.

30. Sheriff's not liable after two years. 11 Stat., 44. 19—5. 412.

31. Liability for contempt, or breach of duty. 11 Stat., 44. 20.

32. Liable for failure to execute process, or pay over money. Ib. 44. 21.

33. When deemed guilty of misconduct; punishment on conviction. Ib. 295.

SEC. 34. If any Sheriff, upon the demand of any plaintiff, or of his attorney, shall willfully refuse to pay over any sum of money collected for such plaintiff, within twenty-four hours, the Sheriff so being in default, besides being liable to rule and attachment, shall be liable also to pay to such plaintiff, or his legal representative, the said sum withheld, and interest thereon, for the time he may withhold such sum after demand, at the rate of five per cent, per month, and if any regular Deputy Sheriff, (in the absence of such Sheriff,) having such fund, shall refuse, one day after demand, to pay over the same, the Sheriff shall, for such default, be liable to the same penalties as are herein provided: *Provided*, That nothing herein contained shall apply to the detention of money on account of *bona fide* conflicting claims.

SEC. 35. That it shall be the duty of the Sheriff, in any case of partial or entire failure to make execution, when required by any person having control of the execution, to furnish a written statement, subscribed by him, of the reasons for such partial or entire failure.

SEC. 36. If any Sheriff, or his Deputy, shall contract for, buy, or purchase any judgment, or decree of any Court, which it may become his duty to enforce, or any execution lodged in his office, or cause the same to be done, directly or indirectly, the said Sheriff, or his Deputy, shall forfeit and pay, for every such offence, treble the amount of such judgment, decree, or execution, one half of which said forfeiture shall be paid to the State and the other half to the informer; and the same shall be recoverable with full costs by action or by indictment in any Court of competent jurisdiction, and, by any such purchase, such judgment, decree, or execution shall be *ipso facto* satisfied.

SEC. 37 If any Sheriff, or his Deputy, shall permit any prisoner, committed to his custody on mesne or final process, in any civil action, to go or be without the prison walls, without lawful authority, or if any Sheriff, or his Deputy, suffer such prisoner to go or be at large, out of the rules of the prison, (except by some writ of *habeas corpus*, or rule of Court, which rule shall not be granted but by motion in open Court,) any such going and being out side of the prison walls, or prison rules, as the case may be, shall be adjudged and be deemed an escape. If any Sheriff, or his Deputy, shall, after one days' notice in writing, given for that purpose, refuse to show any prisoner committed to his charge to the plaintiff at whose suit such prisoner was committed, or to his attorney, such refusal shall be adjudged to be an escape: *Provided*, That the Sheriff shall discharge a defendant in custody on mesne process in a civil case where the plaintiff is non-suited.

SEC. 38. Where any person shall be taken on mesne or final process, in any civil suit, and from inability to pay the demand, debt or damages, or find bail, if committed to the jail, and such person has no lands, tenements, goods, chattels, or choses in action, whereby his maintenance in jail can be defrayed, the plaintiff, or person at whose instance such party shall be imprisoned, shall pay and satisfy the same; and if such person, or his attorney, shall refuse or neglect, after ten days' previous notice, to pay, or give security to pay the same, when demanded, the Sheriff, or Jailer, in whose custody such prisoner is, may discharge him from such confinement: *Provided, however*, That such prisoner shall, before he is discharged, render on oath, a schedule of all his estate, and assign the same.

34. To pay over money one day after demand; penalty for refusal; Ib. 353, 1—55, 63.

35. Sheriffs to give reasons for failure of execution. Ib. 53, 56—432.

36. Sheriff not to buy executions; Penalty. Ib. 47, 3—6, 213. 1.

37. Sheriff not to permit prisoners on civil process to go at-large. 11 Stat., 45, 26 29.—80.

38. Plaintiff in certain Cases to be liable for maintenance of prisoner Ib. 46. 30.

SEC. 39. Every Sheriff, Deputy Sheriff or Jailer, shall have power, and he is authorized, required and commanded to give due obedience to the execution of every writ of *habeas corpus*, made or signed by any person or persons by law empowered to grant the same, and shall do and perform any matter or thing which by the same he may be required to do; and if he shall willfully neglect, refuse or omit to obey or perform the same, when legally requested and demanded in such case, for each such neglect, refusal or omission, he shall forfeit the sum of five hundred dollars, to be recovered by indictment.

SEC. 40. The Sheriff shall be liable for the negligent escape of any prisoner on mesne or final process, to such damages as the plaintiff may have sustained: *Provided*, That the insolvency of the prisoner shall not mitigate the damages below the amount sufficient to carry costs.

SEC. 41. If any Sheriff, Deputy Sheriff, Jailer, or other officer, willfully suffer a prisoner in his custody, under conviction or under any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offence wherein he stood charged.

SEC. 42. If a Sheriff, Deputy Sheriff, Constable or other officer authorized to serve legal process, receives from a defendant or any other person any money or other valuable thing as a consideration, reward or inducement, for omitting or delaying to arrest a defendant, or to carry him before a Trial Justice, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by fine not exceeding three hundred dollars.

SEC. 43. No Sheriff, or Deputy Sheriff, shall be concerned or interested, directly or indirectly, in the purchase of any property sold by either of them officially; and if any such Sheriff or Deputy Sheriff shall be concerned or interested in any such purchase, at any such sale, made by either of them, he shall, on conviction thereof, be deprived of his office, and shall be liable to be fined and imprisoned at the discretion of the Court; and such purchase shall be null and void.

SEC. 44. The Sheriff shall pay over the proceeds of sale of any real estate sold by him to any judgment, having a prior lien thereon.

SEC. 45. In all cases where any Sheriff shall have heretofore legally sold, or, hereafter shall legally sell any real or personal estate, and such Sheriff is now dead, resigned, or otherwise out of office, or shall hereafter die, resign, or otherwise go out of office before he shall have executed titles therefor to the purchaser, it shall be lawful for any subsequent Sheriff of the same County, upon the terms of sale being complied with, or satisfactory evidence produced that they have been complied with, to make and execute good and sufficient title to the purchaser, for the property so sold.

SEC. 46. All moneys which shall hereafter be paid into the Circuit or Probate Courts of the State, or received by the officers thereof in causes pending therein, shall be immediately deposited in some incorporated State Bank or National Bank,

39. Sheriff to execute writs of *habeas corpus*. 11, stat. 43, 43.
40. Liable for escape on mesne process. Ib. 46, 31.
41. Punishable for escape of criminal. 14 Stat., 309. 7.
42. Sheriff's and their deputies or Constables to be punished for taking bribes. Ib. 309—8.
43. Penalty for purchasing at their own sales. 11 Stat., 155, 59,—6, 213,—7, 263.
44. Sheriffs to pay proceeds of Sales to first lien. 11 Stat., 55
45. To make title for property sold by predecessor. 6 Stat., 394—5, 57,—11, 55.

within the Circuit, or in such bank nearest to the place of holding the Court, in the name, and to the credit of the Court.

SEC. 47. No money deposited as aforesaid shall be drawn from said banks, except by order of the Judge of said Courts, respectively, in term or in vacation, to be signed by such Judge, and to be entered and certified of record by the Clerk; and every such order shall state the cause in, or on account of, which it is drawn: *Provided*, That money paid into Court to be immediately paid out, need not be so deposited, but shall be paid upon order of the Court.

SEC. 48. The entire proceeds of a sale or sales of property, subject to levy and sale, made by the judgment debtors, are to be paid over by said judgment debtors to the Sheriff in whose office such judgments, executions or decrees are lodged, to be applied by said Sheriff towards the satisfaction of the same; and, provided no objection shall be made in writing by either of the judgment creditors, and filed with said Sheriff, as to the price at which said property may have been sold, within three months from and after the time such payment shall have been made, the sale or sales shall thereupon be considered confirmed; and the said Sheriff shall make the following endorsement on the back of the deed or deeds of conveyance, viz: "No objection having been filed in my office to the within bargain and sale, within the time prescribed by law, this bargain and sale is therefore confirmed;" the same to be dated and signed officially by the said Sheriff.

SEC. 49. Should either of the judgment creditors object to the prices at which any of the said property may have been sold, and file such notice with the Sheriff within the time before mentioned, the Sheriff shall immediately proceed to levy upon and offer for sale said property, proceeding, in all respects, according to the law in regard to the levy and sale by the Sheriff; and if the highest bid made for such property shall not be more than the amount of the indebtedness which had been cancelled by the sale made by the debtor, the Sheriff shall withdraw said property from sale; and the creditor or creditors who may have filed their objection shall be required to pay all costs and expenses that have accrued in consequence thereof.

SEC. 50. The Sheriff shall make the following endorsement on the back of the conveyance made by the debtor, viz: "Objection having been filed in my office by ————, judgment creditor, I levied upon and exposed for sale the property within named; and failing to receive a higher bid than the amount of indebtedness cancelled by the proceeds of the within bargain and sale, this sale is therefore confirmed," and signed as directed in Section forty-eight in this Chapter.

SEC. 51. In the event that the property, when so exposed for sale by the Sheriff, as provided for in Section forty nine, should bring more than the amount of the indebtedness cancelled by the proceeds of the sale made by the debtor, the purchaser from the debtor shall be refunded the amount paid by him, with interest from the time of payment, and the bargain and sale made by the debtor rescinded, and titles executed by the Sheriff to the purchaser at his sale: and, after deducting the costs and expenses by reason of the levy and sale, the remainder to be ap-

46. Money paid into Court to be deposited. 14 Stat., 16, 10.

47. How such finds may be drawn? Ib. 11.

48. Judgment debtors selling property to pay proceeds to Sheriff—How and when such sales confirmed. 14, Stat., 604.

49. Proceedings if creditors object to sale. Ib. 605.

50. Endorsement to be make by Sheriff. Ib.

51. Proceedings if property sold by Sheriff's brings more than when sold by debtor. Ib.

plied, according to law, towards satisfaction of the judgment or executions in his office.

SEC. 52. That all sales of personal or real estate, or other interest, hereafter ordered to be made by the Courts of Common Pleas or Courts of Probate, shall be made by the Sheriffs of the County in which said real or personal estate or other interest is, at the time said sale is ordered.

SEC. 53. That in all sales by said Sheriff, under the order of Courts of Common Pleas, or under the order of the Courts of Probate, the fees of said Sheriff shall be the same as now fixed by law for sales by Sheriffs under executions issuing from the Courts of Common Pleas.

SEC. 54. If the Sheriff shall neglect or delay to return any warrant or other process pertaining to the Court of General Sessions, issued by a Trial Justice, ten days' before the meeting of the Court, he shall forfeit his fees, and shall be subject to a fine of five dollars, for every such default, if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the Court.

SEC 55. That it shall be the duty of every Sheriff, on the expiration of his term of office, to turn over to his successor all money remaing in his hands as Sheriff, within one month from the time his successor shall have entered on the duties of his office, and in the same manner as he is required to turn over to his successor the furniture, books, bonds, processes, and other papers; and the successor shall receive and be responsible for the money so turned over to him, in the same manner as he is liable for other money received by him as Sheriff.

SEC. 56. The retiring Sheriff shall be entitled to retain only one-half of the commissions allowed by law on moneys collected and so turned over, and his successor the other half, for paying out the same.

SEC. 57. That the retiring Sheriff, or his successor, neglecting or refusing obedience to the requisitions herein contained, shall, respectively, upon conviction by indictment, be liable to a fine of one thousand dollars and imprisonment not exceeding twelve months; and he and the sureties to his official bond shall be liable to the party entitled to receive such money, for the amount due to such party, with interest thereon from the time his successor shall assume the duties of his office, at the rate of five per cent, per month, until the whole amount shall be paid, to be recovered by action.

SEC. 58. That, upon the death of any Sheriff, his personal representative or representatives shall likewise pay over to the successor in office of such deceased Sheriff, all moneys which such deceased Sheriff had in his hands, officially, at the time of his death, within nine months after he, or she or they shall have assumed the administration of such estate; and upon his, her or their neglect or failure so to do, the estate of such deceased Sheriff, and the sureties upon his official bond shall be liable to pay to the party entitled to receive such money, the amount due to such party, with interest at the rate of five per cent, per month thereon, after the expiration of such term of nine months, to be recovered by action.

52. Sheriff's to make all sales ordered by Courts 14 stat,, 324.
53. Sheriffs' fees on sales. 14 stat.. 324.
54. Sheriff subject to fine for not returning warrants, and processes. 6, stat., 552.
55. Sheriff to pay over moneys to successor. 12, stat., 788.
56. Retiring Sheriff entitled to half commissions.. Ib.
57. Liability of Sheriff for disregard of Statutes. Ib.
58. Proceedings on death of Sheriff Ib. 789.

Sec. 59. That the provisions of the preceding Sections be deemed cumulative, and not to bar or affect any right of action, rule, or other proceeding authorized by law.

Sec. 60. That whenever a Sheriff shall collect moneys in cases that have been entered in the books of his predecessors, he shall enter the said cases in his own execution book, with an account of the said moneys so collected.

Sec. 61 If the Sheriff shall charge any other fees or for any other services than those allowed by law, he shall be liable to forfeit to the party injured, ten times the amount of excess of fees so improperly charged, to be recovered by action in the Court of Common Pleas, in which no imparlance shall be allowed, or by rule.

Sec. 62. Sheriffs, Deputy Sheriffs, Coroners and Constables shall serve and execute all legal orders, warrants or processes to them directed by the County Commissioners.

Sec. 63. The Sheriffs of the several Counties in this State are required to serve all processes which may be issued by the Probate Judge under the provisions of Sections 11 to 19, inclusive, of Chapter 90, for which they shall receive the same fees as are allowed them by law for similar services.

Sec. 64. The Sheriff s costs shall be paid out of the proceeds of the sale of the real estate of the deceased, or by the petitioner or petitioners, as provided for in Section 18 of said Chapter.

Sec. 65. The Sheriff shall make a memorandum, in writing, of the date of every levy, and specify the property upon which such levy has been made on the process, or in a schedule thereunto annexed, and if more than one process be levied on such property, reference on each shall be made to such memorandum or schedule.

Sec. 66. When any Sheriff or other officer shall take the lands, tenements, goods and chattels, of any person whatsoever, by virtue of any execution, and the owner of such lands, tenements, goods and chattels, shall not, within five days after such taking, satisfy the party issuing such executions, his debt, damages and costs, such Sheriff or other officer, shall and may sell, by auction, the lands, tenements, goods and chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment, for the best price that can be got for the same.

Sec. 67. The Sheriff of every County in this State shall, before he exposes any lands or tenements which he may be directed to sell by virtue of any execution or mortgage, publicly advertise the same three weeks immediately previous to the sale day or days on which he means to expose the same for sale.

Sec. 68. He shall specify in the advertisement the property to be sold, the time and place of sale, the name of the owner of the property, and at whose suit the

59. Civil proceedings against Sheriffs. 12, stat. 789.
60. Collections of money. Ib. 789.
61. Liability for exacting improper fees. 11 Stat., 151.
62. Sheriff to serve process issed by County Commissioners. 14 Stat., 129.
63. Sheriff's required to serve process issued by Probate Judge. Gen. Stat., 422.
64. Sheriff's costs, how paid. Ib.
65. Sheriff to keep memorandum of levy. 11 Stat., 50.
66. Property taken in execution to be sold. 7, Stat., 229.
67. Sheriff to advertise sales. 5 Stat., 305—11, 54.

sale is made, and shall publish the advertisement at three public places in the County, one whereof shall be the Court House door : *Provided*, That publication shall also be made in some gazette three times before the day of sale, in every County where a newspaper may be printed.

SEC. 69. The regular day of Sheriff's sale shall be the first Monday in each month : *Provided* If there be not time to dispose of all the property on Monday, the next day following shall also be a regular sale day, if by public outcry on Monday notice of sale on the next day shall be given. The Sheriff may sell property at any other time, when so ordered by a Court of competent authority.

SEC. 70. The place of Sheriff's sale, as to real estate, shall be at the Court House of the County : *Provided*, The sales for Georgetown County may be conducted at the Market place, and those for Charleston County at the Exchange in Charleston ; personalty may be sold at the place whereon it may be found by the Sheriff, upon levy, or such other more convenient public place as may be selected.

SEC. 71. The hours of sale shall be between eleven and three o'clock, in Charleston County, and eleven and five, in each other County ; but not at any time after notice given by the Sheriff that the sales for the day have been closed.

SEC. 72. Every Sheriff's sale, made by virtue of the directions of an execution, shall be for cash ; and if the purchaser shall fail to comply with the terms aforesaid, the Sheriff shall proceed to re-sell at the risk of the defaulting purchaser, either on the same, or some subsequent sale day, as the plaintiff, or his counsel may direct ; and in the absence of any direction by the plaintiff, the Sheriff shall so re-sell on the same day, if practicable, and if not, on the next succeeding sale day, making, in every such case, proclamation that he is re-selling at the risk of such defaulting former purchaser.

SEC. 73. In all cases where any Sheriff shall legally sell any real or personal estate, and such Sheriff shall die, resign, or otherwise go out of office, before he shall have executed titles therefor to the purchaser, it shall be lawful for any subsequent Sheriff of the same County, according to the terms of sale, to make and execute good and sufficient title to the purchaser for the property so sold.

SEC. 74. The Sheriff of Richland County shall attend every session of the Supreme Court, to perform such official service as by the said Court shall be required, and he shall be allowed and paid therefor at the rate of five dollars per day. Said Sheriff shall, under the direction of the Chief Justice, secure a suitable room in which to hold said Court, and offices for use of the same, and provide necessary furniture, printing, blank books, stationery, fuel and lights ; and the accounts and vouchers for all of said expenditure and service shall be certified to, under oath, by said Sheriff, approved by the Chief Justice, audited by the Comptroller General, and paid by the Treasurer of the State out of any funds not otherwise appropriated.

SEC. 75. *Venires* for jurors, issued by the Clerk, shall be served by the Sheriff of the County, without delay, upon the Board of Jury Commissioners of the said County.

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68. Advertisement, what to contain;—Publication. 11, stat. 598.
69. Days of sale. Ib. 54.
70. Place of Sheriff's sales. Ib.
71. Hours of Sheriff's sales, Ib.
72. Sales to be for cash—provision for re sale. Ib.
73. Sheriff's to make title, to lands sold by predecessor. Ib.
74. Duty of Sheriff of Richland County. 14, Stat , 73, 1.
75. Sheriff to serve *venire* for jurors. 8, Stat,, 417, 9.

The Sheriff shall, at least four days before the time when the jurors are required to attend, summon each person who is drawn by reading to him the *venire*, with his endorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn, and the time and place of the sitting of the Court at which he is to attend, and shall make return of the *venire*, with his doings thereon, to the Clerk of the Court, before the opening or time of holding the Court from which it issued.

SEC. 76. The Sheriff shall have the custody of the jail in his County, and if he appoint a jailer to keep it, the Sheriff shall be liable for him; and the Sheriff, or jailer, shall receive and safely keep in prison, any person delivered or committed to either of them, according to law, without taking anything for the receipt.

SEC. 77. Every Sheriff in this State, who does not live in the jail, shall employ a proper and discreet person as jailer, who shall live within the same, and who is hereby prohibited from using the house for any other purpose than that for which it was designed by law.

The Sheriff shall appoint such jailer in writing, a copy of which appointment shall be deposited in the office of the Clerk of the Circuit Court of the County wherein such jailer is appointed.

SEC. 78. The Sheriff or jailers, in the several Counties of this State, shall keep in safe custody all prisoners committed to them under the authority of the United States, until such prisoners are discharged by due course of law of the United States, under the like penalties as in case of prisoners committed under the authority of this State, and upon the terms of the resolution of the Congress of the United States at their sessions, begun and holden on the fourth Monday of March, Anno Domini one thousand seven hundred and eighty-nine.

SEC. 79. Sheriffs and jailers shall keep prisoners for debt, in cases of fraud, in separate apartments of the jail, and the Sheriff or other officer herein offending shall be liable to an action of the party aggieved, and also to an indictment, and, on conviction, shall be punished as for a misdemeanor.

SEC. 80. Any Sheriff to whom a warrant summoning a Coroner's Jury shall come, shall forthwith execute the same, and repair unto the place at the time therein mentioned, and make return of the warrant, with his proceedings thereon, to the Coroner that granted it: and every Constable or Sheriff, failing to perform the duty by such warrant required of him, or failing to return the same, as aforesaid, shall forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action: and each and every person summoned and warned, as aforesaid, to be a juror, and failing to appear and act as such juror, shall, also, forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action.

SEC. 81. All Sheriffs and jailers are required to receive, and keep securely, all persons committed by the Coroner.

SEC. 82. The Sheriff of each County shall set apart in the jail a room for the confinement of such persons as may be exclusively in the custody of the Coroner, of which the Coroner shall have exclusive control.

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76. Sheriff to have custody of jail 11, Stat., 48, 42.
77. To Employ jailors and deputy.— certificate of appointment. Id.
78. U. S. prisoners to be kept in custody. 7 Stat., 257.—11. 47.
79. Felons and debtor to be loaned separately. Con. Art. 1, 20.
80. Sheriff to execute warant of Coroner. Gen. Stat. 636.
81. Prisoners sent by Coroner to be kept in jail 11, Stat., 76.
82. To set apart room for Coroner's prisoners. Id. 78.

SEC. 83 No pauper, lunatic, idiot, or epilectic shall hereafter be confined for safe keeping in any jail; and, if any such person shall be imprisoned, under and by virtue of any legal process, it shall be the duty of the Sheriff, in whose custody he may be, to obtain his discharge as speedily as possible, and send him forthwith to the Asylum, according to law, at the expense of the County within whose limits he shall have gained a settlement.

SEC. 84. Every Sheriff shall make a return to every Court of General Sessions of his County, on the first day of term, of the name of every prisoner, and the time and cause of his or her confinement, whether civil or criminal.

SEC. 85. It shall be the duty of the jailers of the several Counties of this State, at the sitting of each Court of Sessions, to report to the presiding Judge the names of the persons confined in jail, who are lunatics, idiots, epileptics, with the cause of their detention.

SEC. 86. It shall be unlawful for Sheriffs or jailers to make any discrimination in the treatment of prisoners placed in their custody.

Every violation of the foregoing Section shall be a misdemeanor, and, upon conviction thereof, the party convicted shall be fined not less than twenty-five dollars and imprisoned for not less than one month, nor more than twelve months.

SEC. 87. When any person accused of a capital offence shall be in custody, and the Sheriff, acting by himself or his regular Deputy, shall have cause to suspect that such person may be rescued, or will probably effect his escape, the Sheriff may impress a sufficient guard for securing and keeping safely such prisoner, so long as it may be the duty of the Sheriff to keep said prisoner, in jail, or his custody. And the Sheriff, by himself or his regular Deputy, shall have power to call out the *posse comitatus* to his assistance, whenever he is resisted, or has reasonable grounds to suspect and believe that such assistance will be necessary in the service or execution of process in any criminal case; and any person refusing to act as such guard, or to assist as one of the *posse comitatus* in the service or execution of process, when required by the Sheriff, shall be liable to be indicted therefor, and upon conviction, shall be fined and imprisoned at the discretion of the Court.

SEC. 88. Each Sheriff shall, annually, report to the County Commissioners the actual condition of the jail, the repairs which may be wanting, and their probable cost.

SEC. 89. That whenever the real estate of any head of a family, resident in this State, shall be levied upon by virtue of any mesne or final process, issued from any Court upon any judgment obtained upon any right of action, whether arising previous or subsequent to the ratification of the Constitution of the State of South Carolina, if the same be the family homestead of such person, the Sheriff or other officer executing said process, shall cause a homestead, such as said person may select, not to exceed the value of one thousand dollars, to be set off to said person

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83. Paupers and lunatics not to be kept in jail 11 Stat., 51.

84. Sheriff to return names of prisoners to Court, Ib. 52,

85. Jailors to report if any lunatics, &c., are confined Ib. 48.

86. Sheriff's to make no discrimination in treatment of prisoners; Penalty for making, 14, Stat., 107.

87. Sheriff may impress guard and call out *posse comitatus*. 11 Stat., 52,

88. Sheriff to report condition of jail, Ib. 48.

89. Sheriff to set out Homestead. 15, Stat., 223.

in the manner following, to wit: He shall cause three appraisers to be appointed, one to be named by the creditor, one by the debtor, and one by himself, who shall be discreet and disinterested men, to be selected from a different neighborhood, and in no wise related to either party, resident in the County, and who shall be sworn by a Trial Justice, or a Justice of the Peace, to impartially appraise and set off, by metes and bounds, a homestead of the estate of the debtor, such as he or she may select, not to exceed the value of one thousand dollars; and the said appraisers shall proceed, accordingly, to set out the homestead, and the set-off and assignment so made by the appraisers shall be returned by the officer, along with said process, for record in Court; and if no complaint shall be made by either party within thirty days thereafter, no further proceedings shall be had against the homestead, but the residue of the lands and tenements of the head of the family, if any more or other he shall have, shall be liable to attachment, levy and sale: *Provided*, That upon good cause shown, within thirty days after assignment of the homestead, the Court out of which the process issued may order a re-appraisement and re-assignment of the homestead, by other appraisers appointed by the Court: *And provided, further*, That should the creditors or debtors neglect or refuse, after due notice from the officer executing the process, to nominate an appraiser, then said officer shall appoint the same.

SEC. 90. That, if the homestead assigned under Section 1 of this Act shall not amount in value to one thousand dollars, then the Sheriff or other officer who shall make sale of the residue of the real estate of the person claiming the homestead, shall pay to said person, in preference to all other claims, out of the proceeds of said sale, such a sum in money as will make up the one thousand dollars.

SEC. 91. That the heads of any family to whom a homestead shall have been assigned under this Act, may sell and dispose of the same, and execute good and legal titles thereto; *Provided*, They shall deposit the money arising from the sale thereof in the custody of the Sheriff of the County, until they shall purchase another homestead within the limits of this State; the said Sheriff to be responsible for the money so deposited, upon his official bond.

SEC. 92. That the said Sheriff shall not pay out the money so deposited; except to the person from whom the head or heads of the family may purchase another homestead, as hereinbefore prescribed, or so much thereof as will pay for the same. The residue of the money deposited, if any, shall then be paid to the person or persons who deposited the same: *Provided*, That if another homestead shall not be purchased, within the limits of this State, within three months from the date of deposit, the Sheriff, or other officer, shall apply the money so deposited to the payment of the debts due from the depositor, if any there be.

SEC. 93. That no Sheriff, Constable, or other officer, whose duty it is to enforce executions, shall proceed in any other manner than is prescribed in this Act.

SEC. 94. Should any officer sell any real estate, or sell or remove any personal property, of the head of any family, whether the head of such family is a freeholder or not, without his or her consent, in violation of the provisions of this Act, and of Section 32 of Article 2, of the Constitution of the State of South Carolina, he

90. Duty of Sheriff when homestead is less than $1,000. 15, stat. 230.
91. Sale of homestead, Ib.
92. How money realized to be disposed of. Ib.
93. Sheriff to proceed according to this Act. Ib.
94. Penalty for violation of its provisions. Ib.

shall be deemed guilty of malfeasance in office, and, on conviction thereof, shall, for the first offense, be fined in a sum not less than five hundred (500) dollars, nor more than one thousand (1,000) dollars; and, for the second offense, shall be dismissed from office; and, in either case, shall be liable to the parties for all injuries by reason of his wrongful levy or sale.

SEC. 95. Appraisers appointed to set out the homestead, under this Act, shall receive, as compensation, two dollars each, per day, and five cents a mile for every mile necessarily travelled, for such services. The Trial Justice, or Justice of the Peace, who qualifies the appraisers, shall receive seventy-five cents, and five cents a mile for every mile necessarily travelled, for such services. The foregoing fees shall be paid by the officer executing the process out of the property of the debtor; or, in case of the homestead set out to a widow or minor children, out of the estate of the deceased, by the executor or administrator thereof. The Sheriff is hereby authorized to retain two and one-half per cent, on every one hundred dollars deposited with him, as directed by this Act, as compensation for receiving and paying out moneys so deposited.

SEC. 96. An action against a Sheriff, Coroner or Constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution must be had within three years. But this Section shall not apply to an action for an escape.

SEC 97. An action against a Sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process, must be begun within one year.

ARREST AND BAIL.

SEC. 98. The affidavit and order of arrest shall be delivered to the Sheriff or Constable, who, upon arresting the defendant, shall deliver to him a copy thereof.

The Sheriff or Constable shall execute the order by arresting the defendant and keeping him in custody until discharged by law, and may call the power of the County to his aid in the execution of the arrest, as in case of process.

SEC. 99. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest as provided in this Chapter.

SEC. 100. The Sheriff or Constable shall, within four days after the deposit, pay the same into Court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff or Constable, to collect the sum deposited, as in other cases of delinquency.

SEC. 101. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the Sheriff or Constable shall himself be liable as bail. But he may discharge himself from such

95. Compensation of appraisers and fees of Sheriffs. 15, stat. 232.

96. Time within which Sheriff may be proceeded against for official misconduct. Code 542.

97. For an Escape. Ib. 543.

98 How Sheriff to make arrest in civil action.—Code 563, 207. 208.

99. Sheriff may take bail, or a deposit. Ib. 564.

100. To pay deposit into Court within four days; penalty on default. Ib. 565.

101. When Sheriff liable as bail. Ib. 566.

liability by the giving and justification of bail, as provided in Section 216, 217, 218 and 219, at any time before process against the person of the defendant to enforce an order or judgment in the action.

SEC. 102. If a judgment be recovered against the Sheriff or Constable, upon his liability or bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the Sheriff or Constable, to collect the deficiency, as in other cases of delinquency.

SEC. 103. The plaintiff may, thereupon, by an endorsement in writing upon the affidavit, require the Sheriff of the County where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

SEC. 104. Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the Sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the Sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

SEC. 105. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in Section 108. The defendant's sureties, upon a notice to the plaintiff of not less than two, or more than six days, shall justify before a Judge, Clerk of the Court, or Trial Justice, in the same manner as upon bail on arrest. Upon such justification, the Sheriff shall deliver the property to the defendant. The Sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. If the property, or any part thereof, be concealed in a building or enclosure, the Sheriff shall publicly demand its delivery. If it be not delivered he shall cause the building or enclosure to be broken open, and take the property into his posession; and, if necessary, he may call to his aid the power of his County.

102. Proceedings on judgment against Sheriff. Code 566.
103. Sheriff to take, and deliver personal property. Ib. 567.
104. But may receive security in lieu thereof. Ib.
105. To be responsible till defendant justifies. Ib. Ib. 568.
106. Concealed property, how taken by Sheriff. Ib.

SEC. 107. When the Sheriff shall have taken property, as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 108. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Sheriff, the Sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the Sheriff against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavit that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, and freeholders and householders of the County. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the Sheriff, unless made as aforesaid; and, notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 109. The Sheriff shall file the notice and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

SEC. 110. The warrant shall be directed to any Sheriff or Constable of any County in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his County, or so much as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses, the amount of which must be stated in conformity with the complaint, together with costs and expenses. Several warrants may be issued at the same time to the Sheriffs or Constables of different Counties.

SEC. 111. She Sheriff or Constable to whom such warrant is directed and delivered shall immediately attach all the real estate of such debtor, and all his personal estate, including money and bank notes, except such real and personal estate as is exempt from attachment, levy or sale by the Constitution; and shall take into his custody all books of account, vouchers and papers relating to the property, debts credits and effects of such debtor, together with all evidences of his title to real estate, which he shall safely keep, to be disposed of as hereinafter directed.

SEC. 112. He shall, immediately on making such seizure, with the assistance of two disinterested freeholders, make a just and true inventory of all the property so seized, and of the books, vouchers and papers taken into custody, stating therein the estimated value of the several articles of personal property, and enumerating such of them as are perishable, which inventory, after being signed by the Sheriff, and appraisers, shall, within ten days after such seizure, be returned to the officer who issued the warrant; and the Sheriff or Constable shall, under the direction of such officer, collect, receive and take into his possession all debts, credits and effects of such debtor, and commence such suits, and take such legal proceedings, either in his own name or in the name of such debtor, as may be necessary for that purpose, prosecute and discontinue the same at such times and on such terms as the Court may direct. The property so seized, or the proceeds of such as shall have been sold, and debts collected, shall be kept to answer any judgment which may be obtained in such action.

107. When Sheriff to keep property. Code, 566.
108. Claims of third persons, how adjusted. Ib. 567.
109. Sheriff to file notice with Clerk. Ib.
110. Sheriff to execute warrant of attachment Ib. 572.
111. Warrant how execute. Ib.
112. Duty of Sheriff on attaching real estate. Ib. 373.

SEC. 113. The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the Sheriff or Constable, shall be made by leaving a certified copy of the warrant of attachment with the President or other head of the association or corporation, or the Secretary, Cashier, or managing agent thereof, or with the debtor or individual holding such property, with a notice showing the property levied on.

SEC. 114. Whenever the Sheriff or Constable shall, with a warrant of attachment, or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching, or levying upon such property, such officer, debtor, or individual, shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or incumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of, or debt owing to the defendant. If such officer, debtor or individual refuse to do so, he may be required by the Court or Judge to attend before him, and be examined on oath, concerning the same, and obedience to such order may be enforced by attachment.

SEC. 115. In case judgment be entered for the plaintiff in such action, the Sheriff or Constable shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

By paying over to such plaintiff the proceeds of all sales of perishable property, and of any vessel, or share or interest in any vessel, sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in sub-division four of this Section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the Sheriff or Constable shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such defendant.

If any of the attached property belonging to the defendant shall have passed out of the hands of the Sheriff or Constable without having been sold or converted into money, such Sheriff or Constable shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment; and any person who shall willfully conceal or withhold such property from the Sheriff or Constable, shall be liable to double damages, at the suit of the party injured.

Until the judgment against the defendant shall be paid, the Sheriff or Constable may proceed to collect the notes and other evidences of debt, and the debts that may have been seized or attached under the warrants of attachment, and to prosecute any bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the payment of the judgment.

At the expiration of six months from the docketing of the judgment, the Court shall have power, upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the Sheriff or Consta-

113. How attachment to be levied upon Bank Shares or other stock. Code, 573.
114 Sheriff to be given a Certificate. Ib.
115. How Sheriff to satisfy judgment. Ib. 574.

ble since the service of the attachment, the property attached, and the disposition thereof, and also the affidavit of the Sheriff or Constable that he has used diligence and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the Sheriff or Constable to sell the same, upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defenfant shall have appeared in the action. In case the summons has not been personally served on the defendant, the Court shall make such rule or order, as to the service of notice and the time of service, as shall shall be deemed just.

When the judgment and all costs of the proceedings shall have been paid, the Sheriff or Constable, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

SEC. 116. The actions herein authorized to be brought by the Sheriff or Constable may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the Sheriff or Constable, of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the Sheriff or Constable from all damages, costs and expenses on account therof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases when required by the Sheriff or Constable, justify by making an affidavit that each is a householder, and worth double the amount of the penalty of the bond over and above all demands and liabilities.

SEC. 117. If the foreign corporation, or absent or absconding or concealed defendant, recover judgment against the plaintiff in such action, any bond taken by the Sheriff or Constable, except such as are mentioned in the last Section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant, or his agent, on request, and the warrant shall be discharged, and the property released therefrom.

SEC. 118. When the warrant shall be fully executed and discharged, the Sheriff or Constable shall return the same, with his proceedings thereon, to the Court in which the action was brought.

SEC. 119. Whenever, pursuant to this Code, the Sheriff may be required to serve or execute any summons, order or judgment, or do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall equally be liable in all respects for neglect of duty; and if the Sheriff be a party, the Coroner shall be bound to perform the service, as he is now bound to execute process where the Sheriff is a party; and all the provisions of this Code of Procedure relating to Sheriff shall apply to Coroners where the Sheriff is a party.

SEC. 120. It shall be the duty of the Attorney General, the Comptroller General and Secretary of State, conjointly, to designate, by public notice, one or more newspapers in this State, in which all legal notices, advertisements, or publication for the State, of any and every character required by law to be made public, shall be published; and further to designate a proper number of newspapers for the several Counties of this State, in which all notices, advertisements or publications, for

116. Plaintiff to give Sheriff bond of indemnity. Code, 575.
117. How bond disposed of if judgment be for defendant. Ib.
118. When Sheriff to return warrant and proceeding. Ib. 576.
119. Duty of Sheriff's in executing process under the Code. Ib. 619.
120. Who to designate paper in which to publish legal notices. 14 Stat., 351, 1.

the County or Counties for which, respectively, each paper shall be designated, of any and every character required by law to be made public, shall be published; and said Attorney General, Comptroller General and Secretary of State, shall have power to make such changes and new designations, from time to time, as they may judge the public interest requires.

SEC. 121. All State and County officers, and other persons, are hereby required to furnish to the newspapers designated under this Chapter, for the State and for the respective Counties, for publication, all legal notices, advertisements and publications, of any and every character required by law to be made public; and no legal notice, advertisement or publication required to be made public, shall have any valid force or effect unless published in the newspaper or newspapers designated under this Chapter; and no publication, of any character, in any newspaper not designated under this Chapter, shall be paid for from the funds of this State, or of any County: *Provided*, That the said officers mentioned in Section 120 shall have power, in cases requiring unusual publicity, to order publication in such newspapers, in addition to those designated under this Chapter, as by and with the advice of the Governor, they may select; and bills so incurred shall be audited and paid in the usual manner.

SEC. 122. If any Clerk of the Circuit Court of General Sessions, County Sheriff, or Trial Justice, shall neglect or refuse to immediately pay over, as required, any and all fines and penalties collected by them in any criminal cause or proceeding, he shall, on conviction thereof, be subject to a fine of not less than one hundred, nor more than one thousand dollars, and imprisonment not less than three, nor more than six months, and shall be dismissed from office, and disqualified from holding any office of trust and profit under this State.

SEC. 123. If a Sheriff, Constable, or other officer, authorized to serve legal process, receives from a defendant, or any other person, any money or other valuable thing as a consideration, reward or inducement, for omitting or delaying to arrest a defendant, or to carry him before a Trial Justice, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by fine not exceeding three hundred dollars.

SEC. 124. If any two or more perons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to injure, oppress, or violate the person or property of any citizen, because of his political opinion or his expression or exercise of the same, or shall attempt, by any means, measures or acts, to hinder, prevent or obstruct any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of this State, such persons shall be deemed guilty of a felony, and, on conviction thereof, be fined not less than one hundred, or more than two thousand dollars, or be imprisoned not less than six months, or more than three years, or both, at the discretion of the Court; and shall thereafter be ineligible to, and disabled from, holding any office of honor, trust or profit in this State.

SEC. 125. If, in violating any of the provisions of Sections 1 and 4 of this Chapter, any other crime, misdemeanor or felony shall be committed, the offender or

121. Sheriff's to advertise in papers designated, 14 stat., 351.
122. Sheriff's to pay over fees received—penalty for neglect. Gen'l Stat. 662.
123. Sheriff's punished for receiving pay to neglect duty. Ib. 361.
124 Conspiracy against persons &c, Gen. Stat., 667. 1.

offenders shall, on conviction thereof, be subjected to such punishment for the same as is attached to such crime, misdemeanor and felony by the existing laws of his State.

SEC. 126. It shall be the duty of all Sheriffs, Constables, and other officers, who may be specially empowered, to obey and execute all warrants and other processes issued under the provisions of Sections 1 to 7, inclusive, of this Chapter, to them directed; and should any Sheriff, Constable, or other officer specially empowered, refuse to receive such warrant or other process, when tendered to him, or neglect or refuse to execute the same, he shall, on conviction thereof, be fined in the sum of five hundred dollars, to the use of the citizens deprived of the rights secured by the provisions of this Chapter, or be imprisoned in the County jail, in the discretion of the Court. And the better to enable the Sheriffs, Constables, and other officers specially empowered, to execute all such warrants and other processes as may be directed to them, they shall have authority to summon and call to their aid the by-standers or *posse comitatus* of the proper County; and all persons refusing to obey the summons or call of the officers thus empowered shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished. And such warrants and other processes shall run and be executed by said officers anywhere within the Circuit or County in which they are issued. It shall be lawful for the County Commissioners of the County against which damages may be recovered, under the provisions of this Chapter, to bring suit or suits, in the name of the County, against any and all persons engaged, or in any manner participating in a mob or riot, and against any Constable, Sheriff, or other officer charged with the maintenance of the public peace, who may be liable, by neglect of duty, to the provisions of this Chapter, for the recovery of all damages, costs and expenses incurred by said County, and such suits shall not abate or fail by reason of too many or too few parties defendant being named therein.

SEC. 127. Any person who shall hinder, prevent or obstruct any officer or other person charged with the execution of any warrant or other process issued under the provisions of Sections 1 to 10, inclusive, of this Chapter, in arresting any person for whose apprehension such warrant or other process may have been issued, or shall rescue, or attempt to rescue, such person from the custody of the officer or person or persons lawfully assisting him, as aforesaid, or shall aid, abet or assist any person so arrested, as aforesaid, directly or indirectly, to escape from the custody of the officer or person or persons, assisting him, as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or other process shall have been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact of the issuing of such warrant or other process, shall, on conviction for either of said offences, be subject to a fine of not less than fifty, nor more than one thousand dollars, or imprisonment of not less than three months, nor more than one year, or both, at the discretion of the Court having jurisdiction.

SEC. 128. Sheriffs, Constables and other officers in the several Circuits or Counties, vested with powers of arresting, imprisoning and bailing offenders against the laws of this State, are hereby specially authorized and required to institute proceedings against all and every person and persons who shall violate the provisions of the preceding Sections of this Chapter, and cause him and them to be arrested,

125. Or other Crimes. 14 stat., 560.

126. Sheriff's to execute warrants &c, penalty for neglect. Ib. 3.

127. Penalty for obstructing officers, or receiving offenders. Ib. 668, 4.

128. Sheriff's specially required to enforce provisions of this chapter. Ib. 339, 10.

imprisoned, or bailed, as the case may require, for a trial before such Court as shall have jurisdiction of the offence.

SEC. 129. The Court of General Sessions before whom any criminal shall be tried shall, upon conviction of the offender, by order, authorize and direct the Sheriff or any Constable or Constables of the County where such person shall be dwelling or inhabit, and from whence he shall be committed as aforesaid, or where he shall have any goods within the County, to sell so much of the goods and chattels of the person so to be committed as shall satisfy and pay the charges of conveying and sending him to the said jail as aforesaid.

SEC. 130. The appraisement of the goods and chattels of such person so convicted shall be made by three freeholders, inhabitants of the said County where such goods or chattels shall be, (the said freeholders being first sworn to make a just and true appraisement of the same); and the Constable shall return the sum so by him levied to the County Treasurer, and the overplus of the money which shall be made on such levy shall be delivered to the party.

In every case where any such recognizance shall be adjudged so forfeited, or where any fine shall be imposed by, or recovered for, the use of the State, in any Court, or before a Trial Justice, if the party incuring such fine or forfeiture shall fail to pay down the same, with the costs of prosecution, then a writ, in the nature of an execution, shall issue, by virtue of which the Sheriff, or his Deputy, shall sell (in the same manner as property is sold under execution in civil cases) so much of such offender's estate, real or personal, as may be necessary to satisfy the fine or forfeiture, and also the costs of prosecution, and also the reasonable charge of taking, keeping and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he require it.

If the Sheriff, or his deputy, return on oath that such offender refused to pay, or has not any property, or not sufficient whereon to levy, then a writ of *capias ad satisfaciendum* shall issue, whereby he shall be committed to the common jail, until the forfeiture, costs and charges, shall be satisfied; entitled, however, to the privilege of insolvent debtors.

SEC. 131. When the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any County where the judgment is docketed. When it requires the delivery of real or personal property, it must isssued to the Sheriff of the County where the property, or some part thereof, is situated. Executions may be issued at the same time to different Counties.

Real property adjudged to be sold, must be sold in the County where it lies, by the Sheriff of the County, or by a referee appointed by the Court for that purpose, and thereupon, the Sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold.

That Section 310 of an Act entitled "An Act to revise, simplify and abridge the rules, practice pleadings and forms of Courts in this State," approved the first day of March, A. D. 1870, be, and the same is hereby, altered and amended by striking out therefrom the words "or by a referee appointed by the Court for that purpose," and the word "referee" immediately thereafter.

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129. Sheriff's to sell goods of Criminal to pay Costs. Gen. Stat., 685, 3.

130. Execution to be issued against estate of offender, and if amount not realized, may be committed. Ib. 686.

131. Property to be sold only by Sheriff and referees—Amendment. Ib. 588,—15 Stat., 194.

CHAPTER VII.

OF THE

OFFICE, POWERS AND DUTIES OF CORONERS.

SEC. 1. That there shall be a general election for the election of County Coroners, held in each County, on the first Tuesday after the first Monday of November, A. D. 1876, and on the same day in every fourth year thereafter.

SEC. 2. That the County Coroners shall continue to perform the duties of their respective offices until their successors shall be elected and duly qualified.

SEC. 3. That the County Coroners, before receiving their commissions, shall enter into bonds, to be executed by them and any number of sureties, not exceeding twelve nor less than two, to be approved by a majority of the Board of County Commissioners, that is to say: Of the Coroner of Charleston County, ten thousand dollars; of the Coroner of each of the other Counties, two thousand dollars; said bond to be lodged in the office of the County Commissioners of their respective Counties.

SEC. 4. That every Coroner shall, before he is qualified to act, in addition to the oath of office, take an oath to enforce, and, to the extent of his power and ability carry into effect the law against gaming, and, in all cases, to bring to justice violations of the same, whenever such violations shall come within his view and knowledge.

SEC. 5. When a person has been elected, or designated for appointment, to the office of Coroner, and has taken and subscribed the oath of office and given bond, as required by law, it shall be the duty of the Governor to issue a commssion to him accordingly.

SEC. 6. That the Coroner of any County may appoint one or more deputies, to be approved by any Judge of the Court of Common Pleas of such County, who shall take and subscribe the oath prescribed in Section 30, Article II, of the Constitution, prior to entering upon the duties of said office. Said oath may be administered by any officer authorized to administer oaths in the County.

SEC. 7. That the appointment of every such deputy shall be evidenced by a certificate thereof, signed by his principal, and shall continue during the pleasure of the principal; and every principal may take such bond and security from his

1. Election of Coroners, 14 Stat., 338.
2. Coroner to perform duty till successor is qualified Ib. 338.
3. Amount of Coroner's sureties, and where lodged. Ib. 19.
4. Oaths to be taken by Coroners. 6, Stat., 27
5. Governor to commission Coroners; Constitution Art. 2, 30. Art. 3. 17, Art. 4. 30.
6. Coroners may appoint deputies. 14. Stat., 332. 1.
7. Certificate of appointment to be given. Ib. 332, 2.

deputy as he shall deem necessary to secure the faithful discharge of the duties of his appointment : and the principal shall, in all cases, be answerable for the neglect of duty or misconduct in office of his deputy.

SEC. 8. No Coroner shall act as Jailer, Deputy Sheriff, or under any appointment by a Sheriff ; and if any Coroner shall accept, or shall act under the appointment of the Sheriff of his County, his office shall be vacated, and the same shall be filled in the manner provided by law in case of vacancy from any other cause.

SEC. 9. The Coroner shall keep an office at the Court-house in his County, which shall have proper fixtures, and in which shall be kept his book of inquisitions, which book shall be public property, and shall be turned over to his successor in office.

SEC. 10. Any Trial Justice of the County is authorized and required to exercise all the powers, and discharge all the duties of the Coroner in holding inquests over the body of deceased persons, and taking all proper proceedings therein, in all cases when the Coroner of the County be sick or absent, or at a greater distance than fifteen miles from the place for such inquiry, or when the office is vacant.

SEC. 11. Every Coroner, within the County for which he has been elected or appointed, is empowered to take inquests of casual or violent deaths, where the dead body is lying within his County.

SEC. 12. That if any person shall be bitten by a rattle-snake, and shall die suddenly and immediately of such bite, such death shall be deemed a violent and untimely death, and the Coroner shall have a view of such body, and make inquiry thereon as of any other body that came to any other violent or casual death.

SEC. 13. If the Sheriff shall be a party plaintiff or defendant, in any judicial process, execution, warrant, summons or notice to be served or executed, within his County, the Coroner shall serve or execute such process, execution, warrant, summons or notice ; in the discharge of which duties, he shall incur such liabilities as would, by law attach to their performance, by the Sheriff himself.

SEC. 14. That in the event that a vacancy shall occur in the office of Coroner in any County of the State, whether by death, resignation or otherwise, the Governor shall, by proclamation, designate some Trial Justice of the County wherein the vacancy occurs, to act as Coroner until, by order of the Legislature, an election shall be had to fill the vacancy.

SEC. 15. The Coroner, while discharging the office of Sheriff, shall provide a suitable book, in which he shall enter such executions or other papers as he may be directed to enter by competent authority ; and also all new writs, processes, executions or other papers, proper to be entered by a Sheriff ; and also all his proceedings as Sheriff, in manner and form as Sheriffs are by law to do ; which book, or a certified copy thereof, he shall leave in the Sheriff's office, as a record.

8. Coroner not to act as Jailor or Deputy Sheriff. 11. Stat. 71, 7.
9. Coroner to keep an office, where, and to keep book of inquisitions. Ib. 73. 38.
10. Trial Justice may act as Coroner, when. Ib. 33. 29.
11. Coroner to hold inquests, Ib. 72. 8.
12. To view body of person dying from bite of Rattle-snake, 2. Stat. 273. 10.
13. Coroner to act in case Sheriff be interested party. 11. Stat., 78.. 41.
14. Vacancy in Coroner's office to filled by Governor, 14, Stat., 324.
15. Coroner acting as Sheriff, to keep special book for his entries. 11, Stat., 79. 43.
16. Coroner not bound to act upon papers in Sheriff's office unless instructed thereto. I . 44.

SEC. 16. The Coroner shall not be bound to act upon any papers in the Sheriff's office, except he be specially instructed; nor shall he be bound to embrace, in his return to the Clerk's office, any execution found in the Sheriff's office which is not entered in his book, or upon which he may not have taken any proceedings.

SEC. 17. As soon as the Coroner shall enter upon the duties of Sheriff, he shall, in the presence of the Clerk of the Court, or Jailer of the County, if there be one, make a list of the prisoners in the jail, and signed by himself and the Jailer, to be entered in the Coroner's book, and the original lodged in the Clerk's office.

SEC. 18. Upon retiring from the Sheriff's office, he shall turn over the papers of the office, and the prisoners in jail, to the succeeding Sheriff, in manner and form as Sheriffs may be required to execute the same duty.

SEC. 19. Every Coroner shall keep a book, to be called "The Coroner's Book of Inquisition," into which he shall copy all inquests found within his County, together with the evidence taken before the jury, and all proceedings had before or after their finding.

SEC. 20. The original inquisition and evidence, as taken by him, shall be returned by the Coroner, within ten days next after the finding thereof, to the Clerk of the Court of General Sessions for the County in which it was found.

SEC. 21. The Coroner, before he returns such inquisition and evidence, shall endorse the same in this form.

"SOUTH CAROLINA, }
COUNTY, }

The State *vs.* The Dead Body of A. B.

Inquisition taken this day of A. D. by Coroner for said County, entered and recorded in Coroner's Book of inquisitions, page , this day of A. D. "

SEC. 22. Each County officer, elected or appointed, shall, before entering upon the duties of his office, in addition to the other oaths required by law, take the following oath: "I, A. B, swear (or affirm, as the case may be,) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected, (or appointed, as the case may be,) and I will not, directly or indirectly, sell or dispose of said office, or the profits thereof; but will resign, or continue to discharge the duties thereof during the period fixed by law, if I so long live: So help me God.

SEC. 23. That the following compensation shall be allowed to any physician who may be called in by the County Coroner or acting Coroner to make a *post mortem* examination, and testifying thereof as an expert, to wit: Where death has resulted from violence, the sum of ten dollars; when any chemical analysis is required, a sum not exceeding fifty dollars, together with the expenses of such analysis; and that in every case in which a physician shall be called to any distance beyond one mile, he shall be allowed five cents per mile for travel: *Provided*,

17. Coroner to make list of prisoners, and lodge same in Clerk's office.
18. Coroner to turn over books and papers in Sheriff's office to successor. Ib. 46.
19. Coroner to keep book of "Inquisitions." Ib. 77, 31.
20. Original inquisitions to be filed in Clerk's office. Ib. 32.
21. Endorsement to be made upon them. Ib. 33.
22. Coroner to take oath not to share profits of office. 6, Stat., 384, 4.
23. May call in physician to make *post mortem* examination.—Pay of physician. 12, Stat. 128.

That in all cases in which chemical analysis shall be made, the physician who shall make the *post mortem* examination shall furnish to the County Commissioners, with his account, a full statement of such analysis.

SEC. 24. Every account presented for service for any *post mortem* examination, shall have the certificate of the Coroner, or Trial Justice acting as Coroner, that the services were rendered.

SEC. 25. Whenever, pursuant to this Code, the Sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the Sheriff be a party, the Coroner shall be bound to perform the service, as he is now bound to execute process where the Sheriff is a party; and all the provisions of this Code of Procedure relating to Sheriffs, shall apply to Coroners where the Sheriff is a party.

PROCEEDINGS AT INQUEST.

SEC. 26. When the Coroner shall be informed of, or shall see, the dead body of any person, supposed to have come to a violent and untimely death, found lying within his County, he shall make his warrant, directed to all or any of the Constables of his County, or to the Sheriff of his County, requiring them, or any of them forthwith to summon a jury of fourteen men of the County, to appear before him at the time and place specified in the warrant, which warrant shall be in this form:

"THE STATE OF SOUTH CAROLINA:

To the Sheriff, (or to any Constable or Constables, as the case may be,) of————————County, Greeting:

These are to require you, immediately on receipt and sight hereof, to summon and warn, verbally or otherwise, fourteen men of the said County, to be and appear before me, the Coroner of said County, at ———— within the said County, between the hours of————o'clock, on the ———— day of ————, then and there to inquire, upon the view of a body of a certain person there lying dead, how he came to his death. Fail not herein, as you will answer the contrary at your peril.

Given under my hand and seal, at ———— this ———day of ————, A. D. ————, by me.

A. B., [L. S.]

Coroner for ————————County."

SEC. 27. Any Constable or Sheriff, to whom such warrant shall come, shall forthwith execute the same, and repair unto the place at the time therein mentioned, and make return of the warrant, with his proceedings thereon, to the Coroner that granted it; and every Constable or Sheriff, failing to perform the duty by such warrant required of him, or failing to return the same, as aforesaid, shall forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action; and each and every person summoned and warned, as aforesaid, to be a juror, and failing to appear and act as such juror, shall also, forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action.

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24 Coroner to certify physician's account 12. Stat., 123.
25. To execute process under the Code, when Sheriff is a party. Gen. Stat., 619.
26. Mode of summoning a jury of inquest. 11. Stat., 72 9,
27. Who to serve warrant. Id. 10

SEC. 28. All persons, subject to jury duty in the Circuit Courts, shall be liable to serve as jurors on an inquest on a dead body found within their County.

SEC. 29. Of the jurors summoned and appearing, the Coroner shall swear twelve or more, and administer to the foreman appointed by him an oath, in the form following: "You shall inquire and true presentment make, on behalf of the State of South Carolina, in what manner A. D., here lying dead, came to his death, and you shall deliver a true verdict thereon, according to such evidence as shall be given, and according to your knowledge; So help you God;" and to the others he shall administer an oath in this form: "The oath which your foreman has taken on his part, you shall well and truly observe and keep on your part: So help you God."

SEC. 30. The jury so sworn shall be charged by the Coroner to declare, upon oath, whether the deceased came to his death by mischance and accidence, or by felony; and, if by felony, whether by his own or other's; and, if by mischance, whether by the act of God or of man; and, if he died of another's felony, who were principals, and who accessories, and threatened him of life, or murder, and with what instrument he was struck or wounded; and, if by mischance or accident, by the act of God or man, whether by hurt, fall, stroke, drowning or otherwise. And he shall also charge them to inquire of the persons that were present at the finding of the body, whether he were killed in the same place or elsewhere, and, if elsewhere, by whom or how he was there brought, and of all other circumstances.

SEC. 31. If the jury so charged find that the deceased came to his death by his own felony, they shall further inquire into the manner, names and instruments, and to all the circumstances of the death.

SEC. 32. The jury being charged, they must stand together until proclamation be made for any that can give evidence to draw near, and they shall be heard.

SEC. 33. The Coroner shall have the power to issue a warrant or warrants, to summon witnesses, and examine before the jury any person present, whether summoned or not, concerning the death; and every person summoned or required to give evidence, and disregarding such summons, or refusing to testify, without such excuse as shall be lawful and sufficient, shall forfeit and pay the sum of twenty dollars, and shall be committed to jail by the Coroner, until the next Court of General Sessions, or until he testifies and is discharged by the Coroner; (the said forfeiture to be recovered by indictment;) and, in addition, shall be liable to be indicted at the next Court of General Sessions for the County, and, upon conviction, shall be fined and imprisoned at the discretion of the Court. And the Coroner shall bind such witness or witnesses so appearing, by recognizance, with good and sufficient surety, to appear at the next Court of General Sessions, to stand his trial; and the witnesses refusing to enter into such recognizance shall be forthwith committed to the jail of the County, by commitment, under the hand and seal of the Coroner, there to be kept until they enter into such recognizance, as before required.

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28. Who subject to duty as Coroner's jury. 11, Stat., 72, 11.
29. Number of jurors; and oath to be administered, Ib. 73, 12.
30. Coroner to charge jury. Ib. 74, 13.
31. Inquiry in case of suicide. Ib. 14.
32. Coroner to make proclamation. Ib. 15.
33. General powers of Coroners. Ib. 73, 15.

SEC. 34. A Coroner shall have power, if he deem it necessary, to adjourn the jury, either from day to day, or to any other day and place, to receive evidence, binding the jurors severally by one recognizance, in such amount as he shall think fit, for their appearance; which recognizance may be estreated, as to any of the conusors for default, by the Court of General Sessions.

SEC. 35. If all or any of the jurors should fail to re-appear at the day and place to which they were adjourned, the Coroner shall issue his warrant to supply the places of the absent jury, or of so many of the jurors absent as may be necessary; and the jurors last summoned shall be sworn and charged as those first summoned were, and shall have the same powers, and be liable to the same penalties.

SEC. 36 The witnesses examined upon the inquest shall be sworn as follows, by the Coroner, who is empowered to administer the oath, that is to say; "The evidence you shall give to this inquest concerning the death of A. B., here lying dead, shall be the truth, the whole truth, and nothing but the truth: So help you God."

SEC. 37. The testimony of all witnesses examined upon an inquest shall be taken down in writing by the Coroner, and signed by the witnesses, and if the testimony tends to criminate any person as concerned in the death of the deceased, the Coroner shall bind over the witness who gave it, in recognizance, with sufficient surety, to appear at the next Court of General Sessions to be holden for the County, to give evidence concerning the death; and such witness, for refusing to enter into such recognizance, shall be committed by the Coroner to the jail of the County, by warrant under his hand and seal, there to be kept until the session of the Court, or until he shall enter into such recognizance as required.

SEC. 38. The jury having viewed the body, heard the evidence, and made inquiry into the cause and manner of the death, shall render their verdict thereon, in writing, to the Coroner, under their hand and seals, in the manner following, (which shall pass by indenture interchangeably between the Coroner and jury) that is to say:

SOUTH CAROLINA,)
COUNTY,)

An inquisition indented, taken at ————, in ——— County, the ——— day of ———, A. D. ————, before A. B., Coroner, (or C. D., Trial Justice, acting as Coroner for said County,) upon the view of the body of E. F., of ————, then and there being dead, by the oaths of (inserting the names of the jurors,) being a lawful jury of inquest, who, being charged and sworn to inquire, for the State of South Carolina, where and by what means the said E. F. came to his death, upon their oath do say," &c.; (inserting how, where, at what time, and by what instrument the deceased was killed;) and, if it shall appear that the deceased was willfully killed by another, the inquisition must be concluded in this form: "And so the jurors aforesaid, upon their oaths aforesaid, do say that the aforesaid J. K., in manner and form aforesaid, E. F. then and there feloniously did kill, against the peace and dignity of the same State aforesaid."

SEC. 39. If it appear that the deceased came to his death by means unknown to the jury, the inquisition shall conclude thus; "That the said E. F. was killed and murdered by some person or persons, (or, by some means,) to the jurors unknown,

34. Coroner may adjourn inquest, and bind over witnesses. 11, Stat., 74. 16.
35. If jurors absent, how vacancies filled. Ib. 74, 18.
36. Form of oath to be administered to witnesses. Ib. 19.
37. Coroner to take testimony in writing, and to bind over or commit witnesses. Ib. 20
38. Form of verdict of Coroner's jury. Ib. 21.

against the peace and dignity of the same State aforesaid."

SEC. 40. If it appear that he died by self murder, the inquisition shall conclude, "That the said E. F., in manner and form aforesaid, then and there, voluntarily and feloniously, himself did kill, against the peace and dignity of the same State aforesaid."

SEC. 41. If it appear that the deceased came to his death by mischance, the finding shall conclude: "That A. B., in manner and form aforesaid, came to his death by misfortune, or accident."

SEC. 42. If the proof shall be that the death was occasioned by the hands of another, the conclusion shall be: "That J. K. the said E. F., by misfortune, and contrary to his will, in manner and form aforesaid, did kill and slay."

SEC. 43. After the conclusion above, according to the facts, the inquisition shall end in this form: "In witness whereof, I————, Coroner aforesaid, and the jurors aforesaid, to this inquisition have interchangeably put our hands and seals, the day and year above mentioned.

A.B., [L. S.]
Coroner, ———— County.
C. D., [L. S.]
Foreman of Jury of Inquest
E. F., &c., [L. S.]
Jurors."

SEC. 44. If the finding of the inquest be willful killing by the hands or means of another, the Coroner shall forthwith issue his warrant, directed to the Sheriff, or to one or more Constables for the County, for all the persons implicated by said finding, which warrant shall be in this form:

"THE STATE OF SOUTH CAROLINA:

By A. B., Coroner, (or C. D., Trial Justice, acting as Coroner,)
fo: ————County: To ————, Sheriff of
———— County:

Whereas, by inquisition by me held, on (time and place inserted,) it was found that (here insert the finding of Jury.) These are, therefore, to command you forthwith to apprehend, (here to insert the names or name of the accused,) and bring him, (or them,) before me, to be dealt with according to law.

Given under my hand and seal, the ————day of ————, A. D.,————
A. B., Coroner. [L. S.]
(or, C. D., Trial Justice, acting as Coroner.)

SEC. 45. Upon the return of the said warrant, and the arrest of the party or parties, the Coroner shall proceed to commit him, her or them, by warrant, in the following form:

To the Sheriff, or Jailer, of————County:

30. Finding of jur. in case of death by means unknown. 11, Stat.; 74, 22.
40. Finding in case of death by suicide. Ib. 23.
41. Finding in case of death by mischance. Ib. 24.
42. Finding in case of death by the hands of another. Ib. 25.
44. Form of conclusion of Inquisition. Ib.
44. Warrant to be issued in case of finding for murder. Ib. 76, 27.
45. Form of commitment. Ib. 28.

You are hereby commanded and required to receive and keep in close confinement, in the jail of your County, (here insert the name or names of the party or parties,) charged before me by the finding of a jury of inquest, held on the ——— ———day of ————————, at ————————, with (here insert finding,) until he. (she or they) shall be delivered by due course of law. Herein fail not.

Given under my hand and seal, this———————— day of ————————, A. D.———————

A. B., Coroner. [L. S.]

(or, C. D., Trial Justice, acting as Coroner.)

SEC. 46. All Sheriffs and Jailers are required to receive and keep securely all persons so committed by the Coroner.

SEC. 47. If the finding of the inquest be that the deceased came to his death by mischance, by the hands of another, the Coroner shall bind in recognizance, with sufficient surety, the party against whom the verdict has been rendered, to appear at the next Court of General Sessions for the County, that the same may be then and there inquired into; and the Coroner shall also bind over by recognizance, with good surety, all such material witnesses as were examined before the jury of inquest.

SEC. 48. If any person shall bury, or cause to be buried, the dead body of a person supposed to have come to a violent death, before notice to the Coroner to examine the body, and before inquiry is made into the manner and circumstances of the death, such person shall be liable to indictment therefor before the Court of General Sessions, and, upon conviction, shall be fined and imprisoned at the discretion of the presiding Judge. And the Coroner shall bind him in recognizance, with sufficient surety, to appear and stand his trial at the ensuing term of such Court.

SEC. 49. If the Coroner shall know, or be informed, of the interment of the body of a person, supposed to have come to a violent death, he shall proceed to empannel a jury, as is hereinbefore directed, and order such body to be taken up, and shall conduct his examination into the cause and manner of the death, as though such body had been buried.

SEC. 50. If the body has been so long dead and buried, or so injured by improper keeping, as that the causes of the death cannot be ascertained upon the examination, the Coroner shall make record of the fact, stating its condition, by whom, and how it had been kept or buried, the circumstances of the burial, and the identity (if discovered;) which record shall be entered in his book, and returned, as any other inquisition, to the Clerk of the Court of General Sessions for the County.

SEC. 51. The person burying, or directing the burial, of the dead body of one supposed to have come to a casual or violent death, without due notice to the Coroner, upon conviction thereof, by indictment, in the Court of Sessions, shall be liable to be fined and imprisoned, at the discretion of the Court. And the Coroner shall bind him in recognizance, with sufficient surety, to appear and stand his trial at the ensuing term of such Court.

46. Sheriff required to keep prisoners committed by Coroner. 11, Stat., 76. 29.
47. Coroner to bind over party killing accidentally, with the witnesses. 7b. 47, 30.
48. Penalty for burying body without inquiry. Ib. 34.
49. Body to be disinterred if Coroner suspects violent death. Ib. 35.
50. Record &c., if body has been long dead. Ib. 36.
51. Liability for burying without inquest. Ib. 77, 37.

CHAPTER VIII.

OF THE

OFFICE AND DUTIES OF COUNTY COMMISSIONERS.

SEC. 1. That County Commissioners, elected in pursuance of Section 19 of Article IV of the Constitution, shall have jurisdiction over roads, highways ferries, bridges, and in all matters relating to taxes and disbursements of money for County purposes, and in every other case that may be necessary to the internal improvement and local concerns in their respective Counties.

SEC. 2. There shall be an election held on the first Tuesday after first Monday in November, Anno Domini, one thousand eight hundred and seventy-four, and on the same day every second year thereafter, for the election of three County Commissioners in each County.

SEC. 3. County Commissioners, before entering upon their duties, shall be sworn, and, at their first meeting after their election, shall choose a Chairman of their Board.

SEC. 4. That all the Board of County Commissioners shall be present for the transaction of business, and shall audit and sign all bills and checks. The checks shall, in all cases, be countersigned by the Clerk of the Board.

SEC. 5. Every Chairman shall have power to administer an oath to any person, concerning any matter submitted to the Board, or connected with their powers or duties.

SEC. 6. The County Commissioners of the several Counties of this State shall meet, annually, in their respective Counties, for the dispatch of business; they may also hold special meetings at such times and places as they may find convenient, and shall have power to adjourn from time to time, as they may deem necessary.

SEC. 7. County Commissioners, when assembled for the performance of their duties, may punish disorderly conduct causing interruption to the business of their meetings, or amounting to an open and direct contempt of their authority or persons, by fine not exceeding ten dollars, or by confinement in the custody of the Sheriff or a Deputy Sheriff, Coroner or a Constable, for a time not exceeding twelve hours.

SEC. 8. Sheriffs, Deputy Sheriffs, Coroners and Constables shall serve and exe-

1. Jurisdiction of County Commissioners. 14, Stat., 123.
2. County Commissioners; When elected, and tenure of office. Ib, 338.
3. Members to be sworn and Chairman to be chosen at first meeting. Ib, 123.
4. Whole Board to be present for transaction of business: Clerk to countersign checks. Ib. 662.
5. Chairman empowered to administer oaths. Ib 129.
6. Boards to hold annual, and special meetings. Ib.
7. Commissioners may punish contempts. Ib.
8. Sheriff to serve process issued by Commissioners. Ib.

cute all legal orders, warrants or processes to them directed by the County Commissioners.

SEC. 9. The Board of County Commissioners of each County in the State shall have power, at their annual meeting :

1. To examine, settle, and allow all accounts chargable against such County, and draw orders on the County Treasurer for the same ; but the County Commissioners shall not draw any order upon the County Treasurer until after the monthly return of the Treasurer shall have been made to the County Commissioners, of the amount of funds collected, nor unless he has the funds in the Treasury to pay the same. And the County Commissioners shall inform the County Treasurer of the orders drawn, in whose favor, the amount, and the order in which they are drawn. And should the County Commissioners or any one of them, purchase, directly or indirectly, any order drawn upon the County Treasurer, for less than its face value, they shall be deemed guilty of misdemeanor in office, and, upon conviction thereof, shall be punished by fine or imprisonment in the discretion of the Court, by any Court of competent jurisdiction.

2. To cause to be levied, collected, and paid to the Treasurer of the County, such sum of money as may be necessary to construct bridges therein, and to prescribe upon what plan, and in what manner, the moneys so to be raised shall be expended.

3. To apportion the tax so to be raised among the several towns and wards of their County, as shall seem to them to be equitable and just.

5. To cause to be levied, collected, and paid, all such sums of money as they shall deem necessary for re-building or repairing the Court-house or jail of their County, or for building, or repairing the Clerk's office for the County, and to prescribe upon what plan, and in what manner, money so raised shall be expended ; and all work given out by the County Commissioners, when the amount exceeds the sum of one hundred dollars, shall be done by contract : and the Commissioners are hereby required to advertise the same, in at least one of the papers of the County, and also post the same in three conspicuous places in the County, for thirty days, inviting proposals : said proposals shall, in all cases, be accompanied by two or more sufficient sureties , and the County Commissioners shall have the right to reject any or all bids, if, in their judgment the interests of the County so require.

5. To cause to be raised by tax upon such County, any sum of money, not to exceed the sum of five thousand dollars in any one year, for the purpose mentioned in the first and second sub-divisions of Section 11 of this Chapter.

SEC. 10. The County Commissioners shall assess all taxes for County purposes upon the then last State valuation ; and for this purpose shall, on or before the first day of January in each year, obtain from the Auditor of the County (who is authorized and required to furnish the same) a certified copy of the County duplicate, and shall, on or before the fifteenth day of January thereafter, pursuant to authority given by the General Assembly, make out and deliver to the County Treasurer, with their warrant to collect, a tax bill for County purposes. Said tax bill and warrant shall be signed by the County Commissioners, or a majority of them, sealed with their seal, and certified to by their Clerk. Said tax bill and warrant shall be the Treasurer's sufficient authority, and he shall proceed thereon

9 General powers of Commissioners. 14, Stat., 662.—6, 321,—11, 156.
10. How Commissioners shall assess taxes. 14, Stat., 274.

to collect the taxes therein laid in the same manner as provided by law for the collection of State taxes.

SEC. 11. The Boards of County Commissioners shall have power, and they are authorized, at any meeting thereof lawfully assembled:

1. To purchase for the use of their respective Counties any real estate necessary for the erection of buildings and for the support of the poor of such County.

2. To fix upon and determine the site of any such buildings, and cause to be erected necessary buildings for poor houses, and prescribe the manner of erecting the same.

3. To borrow money for the use of such County, to be expended for the purchase of any real estate, or for the the erection of any such buildings, and to provide for the payment thereof, with interest, by tax upon such County, within ten years from the date of such loan, in yearly installments or otherwise: *Provided*, That no such loan shall be created by the County Commissioners until they notify the General Assembly of the necessity thereof, and authority be granted to them to create said loan.

4. To authorize the sale or leasing of any real estate belonging to such County, and to prescribe the mode in which any conveyance shall be made.

5. To make such orders concerning corporate property of the County as they may deem expedient.

6. To examine, approve or disapprove the official bonds of all County officers.

7. To require any County officer whose salary is paid by the County to make report, under oath, to them, on any subject or matter connected with the duties of their offices; and the said officers are required to make such report whenever called upon by resolution of such Board; and if any officer shall neglect or refuse to make such report, he shall be guilty of a misdemeanor, and punishable by fine or imprisonment, within the discretion of the Circuit Court.

8. To appoint Special Commissioners to lay out public highways in those cases where they shall be satisfied that the road applied for is important.

9. To divide their Counties into highway districts, each district to contain not less than ten miles of public highways, nor more than forty miles, to be convenient for repairing highways, and may, from time to time, alter the same.

10. To appoint for each highway district, a Surveyor of Highways, to superintend the expenditure of the highway tax, and money appropriated for improvement of highways in his district, and to take charge of and keep in repair, at all times, the highways in his district. Said Surveyor of Highway shall be removable at pleasure.

SEC. 12. That the County Commissioners of each County shall, on or previous to the first day of January, assess a tax of eighteen cents, if so much be necessary, on every hundred dollars of the list of the County, for the purpose of keeping in repair highways and bridges, to be in money or labor, at the option of the tax payer, and laid out in repairing highways and bridges; and they shall, annually, on or before the said first day of January, make out a tax bill for each Surveyor of Highways, containing the amount of the tax to be laid out by him in his district, with the amount of each person's tax annexed to his name, accompanied with a warrant, signed by the Chairman of the Board, authorizing such Surveyor to

11. Specific powers given to County Commissioners—14, Sear, 139. 661, 663.

12. May assess annual tax for highways and bridges. Ib.

collect such tax; and they shall deliver the several tax bills to the respective Surveyors, and take their receipt for the same.

SEC. 13. The County Commissioners shall have power to provide for the payment of the Special Commissioners, appointed under the eighth sub-division of Section 11 of this Chapter, for their time and expenses, at a rate not exceeding three dollars per day each, and five cents for each mile of necessary travel. The decision made by said Special Commissioners may be appealed from, and reviewed in the same manner, and with like authority, as is allowed by law from the acts of the County Commissioners. The roads so to be laid out by such Special Commissioners, or the same as settled on appeal, shall be recorded, opened and worked as public highways of the towns, cities or Counties in which they are respectively situated, in the same manner as other highways of the town, city or County are required by law to be recorded, opened and worked.

SEC. 14. Special meetings of the Board of County Commissioners of any County may be called by the Chairman of the Board on his own motion or the written request of other members of the Board.

SEC. 15. Every resolution of any Board of County Commissioners, passed in pursuance of the provisions of this Chapter, shall be signed by the Chairman and Clerk of the Board, and be recorded in the book of miscellaneous records of the County.

SEC. 16. Each Board of County Commissioners shall appoint some proper person to be their Clerk, whenever necessary, and may remove him at pleasure, whose general duty it shall be:

1. To record in a book to be provided for the purpose, all proceedings by the Board.

2. To make regular entries of all the resolutions or decisions on all questions concerning the rasing or payment of moneys.

3. To record the vote of each Commissioner on any question submitted to the Board, if required by any member present; and,

4. To preserve and file all the accounts acted upon by the Board.

Said Clerk shall take the oath prescribed by the Constitution. He shall receive a reasonable compensation for his services, to be fixed by the Board, not to exceed three dollars per day for the time actually and necessarily employed.

SEC. 17. Copies of all papers duly filed in the office of the Clerk of the Board of County Commmissioners of any County, and transcripts from the books of record kept therein, certified by such Clerk, with the seal of office affixed, shall be evidence in all Courts and places in like manner as if the original were produced.

SEC. 18. The Board of County Commissioners of any County may adopt a seal, and, when so adopted, the Clerks of such Board shall cause a description thereof, together with an impression therefrom, to be filed in the office of the Clerk of the Court of Common Pleas and General Sessions of said County, and in the office of the Secretary of State; and the same shall thereupon be the seal of the Board of County Commissioners for such County.

13. Pay of Special Commissioners—Decisions reviewed. Ib. 131.
14. Special Meetings of Board. Ib.
15. Doings of Boards to be recorded. Ib.
16. Each Board to have Clerk—his duties, oath, salary. Ib.
17. Copies of papers in office may be issued in evidence. Ib. 132.
18. Board may adopt a seal. Ib.

SEC. 19. No account shall be audited by any Board of County Commissioners for any services or disbursements, unless such account shall be made out in items and accompanied with an affidavit attached to, and to be filed with, such account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements and services charged therein have been in fact made or rendered, and stating that no part thereof has been paid or satisfied: *Provided*, Nothing in this Section shall be construed to prevent any Board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as such Board may think proper. No allowance or payment beyond legal claims shall ever be allowed.

SEC. 20. Accounts presented in any year to the Board of County Commissioners of any County shall be numbered from number one upwards, in the order in which they are presented: and a memorandum of the time of presenting the same, of the names of the persons in whose favor they shall be made out, and by whom they shall be presented, shall be entered in the minutes of the Board to which they shall be presented: and no such account, after being so presented, shall be withdrawn from the custody of the Board, or its Clerk, for any purpose whatever, except to be used as evidence upon a judicial trial or proceedings, and in such case it shall, after being so used, be forthwith returned to such custody.

SEC. 21. All fees and accounts of Trial Justices, and other officers, for criminal proceedings, including cases of vagrancy, when not recovered from the defendant or other party complaining, shall be paid by the County wherein the offense shall have been committed; and all accounts rendered for such proceedings shall state when such offence was committed. And the fines imposed and collected in such cases shall be credited and paid to the County Treasurer by the Trial Justice, or other officer imposing and collecting the same. And whenever criminal warrant or process shall be issued by any Trial Justice, or other officer, residing out of the County wherein the offence shall have been committed, it shall authorize the officer executing the same to carry the person charged with the offence before any Trial Justice, resident and being in the County wherein such offence shall have been committed, to be proceeded against according to law; and such officers shall not be allowed any compensation for any further proceedings in any such case beyond issuing such warrant or process.

SEC. 22. No traveling fees shall be allowed for subpœnaing a witness beyond the limits of the County in which the subpœna was issued, or of an adjoining County, unless the Board auditing the account shall be satisfied by proof that such witness could not be subpœnaed without additional travel; nor shall any travel fees for subpœnaing witnesses be allowed, except such as the Board auditing the account shall be satisfied were indispensably necessary.

SEC. 23. The annual meeting of the Board of County Commissioners for each County shall be on the first Tuesday of September, and the Clerk of the Board shall give notice of the time of holding said annual meeting by inserting the same, at least once in each week for four weeks previous to such meeting, in any newspaper or newspapers published in the County; and if there be no paper published

19. In relation to manner of auditing accounts. Ib.

20. Accounts to be numbered in order of presentation. Ib. 133.

21. County to pay certain fees. Ib. 132.

22. Witness' fees—payment regulated. Ib. 129.

23. Notice of Annual Meetings to be published, and accounts to be presented thereat. Ib. 662.

in the County, then he shall post said notice upon or near the door of the Court house of the County; said notice shall require all persons having bills against the County to deposit the same with said Clerk, on or before the first day of September, and in default thereof that such bills will not be audited at said annual meeting.

SEC. 24. The books, records and accounts of the Boards of County Commissioners shall be deposited with their Clerk, and shall be open, without reward, to the examination of all persons.

SEC. 25. The fiscal year shall commence on the first day of September in each year; and it shall be the duty of all persons having any claim or demand against a County to have the same made out in items, with date prefixed, and verified in the manner and form required by law, and to deposit the same in the office of the Clerk of the Board of County Commissioners for the County, on or before the first day of September in each and every year; and the Board of County Commissioners in any County may, in their discretion, refuse to audit or allow any claim or demand, unless made out, verified and deposited in the manner herein specified.

SEC. 26. It shall be the duty of the Clerk to designate every account upon which any sum shall be audited and allowed by the Board, and the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person ten cents for every folio of one hundred words contained in such copy.

SEC. 27. It shall be the duty of the Clerks of the Boards of County Commissioners, on or before the second Tuesday in September in each year, to make out a statement, showing:

1. The number of days the Board shall have been in session within such year, and the distance travelled by the members, respectively, in attending the meetings of the Board.

2. Whether any accounts were audited or allowed without being verified according to law, and, if any, how much, and for what; and such statement shall be certified by such Clerk, and be printed in a newspaper published or circulated in the County, within two weeks after said statement shall be so made out; and it shall be the special duty of such Clerk to see that the same is so published; and for every intentional neglect so to do, such Clerk shall be deemed guilty of a misdemeanor, and punishable by fine or imprisonment, within the discretion of the Court.

SEC. 28. It shall be the duty of the Board of County Commissioners of each County, annually, to publish in one or more newspapers printed or circulated in such County, the name of every individual who shall have had any account audited and allowed by said Board, and the amount of said claim, as allowed, together with the amount claimed.

SEC. 29. Each County shall pay:

1. The fees of grand and petit jurors, while in attendance upon the Circuit Court.

24. Books to be open for inspection. Id. 129.

25. Commencement of fiscal year. 662.

26. Clerk to designate accounts. Id. 133.

27. Clerks to make Annual Statement which shall be published. Id. 662.

28. Every audited account to be published. Id. 133.

2. Witness fees in State cases, for actual attendance on the Circuit Court, and for actual attendance on a Trial Justice's Court.

3. Fees of physicians and surgeons testifying as experts before a Coroner's jury, or at the Circuit Court, after a *post mortem* examination, ten dollars, and five cents per mile for actual and necessary travel.

4. For dieting and keeping persons confined in the County jail.

5. Fees of Circuit Solicitors for services in the County, when not collected from the defendant, at the following rates: In a trial before a jury in civil and criminal cases, or before referees, a docket fee of ten dollars; in cases at law, where judgment is rendered without a jury, seven dollars and fifty cents; said fees to be in lieu of all other compensation whatever.

6. Fees of the Clerks of the Circuit Courts in State cases, at the rates allowed by law.

7. Fees of the County Coroner, at the rates allowed by law.

Before the accounts of Sheriffs, Circuit Solicitors or Clerks shall be presented to the County Treasurer for payment, they shall be sworn to by said officers, examined and certified to by the Judge presiding in the Circuit Court in the County, approved and ordered to be paid by the County Commissioners.

SEC. 30. No account of the Circuit Solicitor, Clerk of the Circuit Court of General Sessions, the County Sheriff, or Trial Justices, for fees, in any criminal cause heard or prosecuted in the Circuit Court, or before a Trial Justice, shall be paid, unless they severally shall declare, on oath, that costs in the said cause have not been recovered of the defendant, and that he, the defendant, was unable to pay the same; and, further, that all fines and penalties heretofore collected by them have been faithfully and fully paid over to the County Treasurer of the County.

SEC. 31. Each member of the Board of County Commissioners, shall be allowed compensation for his services in attending the meetings of the Board, and for necessary time spent in discharging other duties imposed by law, if any, at the rate of three dollars per day, and five cents per mile for necessary travel: *Provided*, That compensation shall not be allowed to any member of the Board of County Commissioners for exceeding one hundred days in anyone year, except to the members of the Board of County Commissioners for the County of Charleston, who shall not be allowed compensation for exceeding one hundred and fifty days in any one year. An account shall be made out in items, with dates prefixed, accompanied with an affidavit of the member, stating that the items of such accounts are correct and just, and that the services therein mentioned have been rendered as stated, and no part of said account has been paid. The accounts shall be presented to the County Treasurer, who shall audit and, if correct, pay the same, out of funds accruing from taxes laid and collected for County purposes.

SEC. 32. No member of the Board of County Commissioners shall vote for an extra allowance to any person who is paid by salary, nor shall the Treasurer of said County knowingly pay to any such person any extra allowance. Every offence against the provisions of this Section shall be a misdemeanor, punishable by a fine not less than the amount of such extra allowance, or by imprisonment in the County jail, for a period not exceeding six months, or by both such fine and imprisonment.

29. What County shall pay,—Contingent accounts to be sworn to, and certified by Judge: 14, S at. 274.— 11, Stat., 47,— 12 Stat. 908.

30. Special oaths required in certain cases before accounts shall be paid. 14, Stat., 636.

31. Compensation of County Commissioners.

32. Penalty for voting extra allowance to any officer. Ib. 134.

SEC. 33. If any County Commissioner shall refuse or neglect to perform any of the duties required of him by law as a member of the Board of County Commissioners, he shall, for every such offence, forfeit the sum of two hundred and fifty dollars, and be removed from office.

SEC. 34. County Commissioners shall, annually, on or before the second Tuesday of September, prepare and make up the estimate for all County charges and debts for the fiscal year then ensuing, and of the rate of taxation necessary to raise money to meet the same: the estimates so made up and approved by them shall be recorded by their Clerk, in a book kept for that purpose, and a fair copy thereof, with a statement of the amount of borrowed money due from the County, and of the amount of taxes due and unpaid at the time of making said estimates, signed by the presiding Commissioner, and attested by their Clerk, shall, with the Treasurer's accounts, be sealed up and transmitted by the Clerk to the office of the Comptroller General of the State, to be laid before the General Assembly for approval.

SEC. 35. Members of the Board of County Commissioners shall hold their office for the term of two years, and until their successors are elected and qualified: *Provided*, If any person elected a member of said Board shall remove from the County without intetion to return, be, or become disqualified, be removed from office, resign or die, the said office, upon proper evidence thereof, shall be declared vacant by the Governor of the State who shall thereupon, by proclamation, if the vacancy to be filled be for more than one year, call an election in said County to fill the unexpired term of said office, giving at least twenty days' notice thereof in the public prints circulating in the County.

SEC. 36. It shall be the duty of the County Commissioners to furnish the County Auditor and Treasurer of their respective Counties, office rooms, together with necessary furniture, stationery, &c., for the same.

SEC. 37. That the County Commissoners of the several Counties in the State are authorized, whenever, in their judgment, it is necessary, to appoint one or more physicians, whose duty it shall be to furnish aid to the indigent sick in their respective Counties; and, whenever accounts are rendered for the performance of such duty, the County Commissioners are to examine said accounts, and, if found correct, audit the same, and give a warrant on the County Treasurer for their payment.

SEC. 38. The County Commissioners of the respective Counties of this State are authorized and required to provide suitable hospital accommodations in connection with the Poor House, at or near the County seats of their respective Counties, where the indigent sick poor may receive medical and surgical aid, free of charge, and to appoint physicians thereto, except the County of Charleston, where the County Commissioners are authorized and required to cause to be built, at or near Cordesville, Parish of St. John's Berkeley, a hospital for the indigent sick poor, and to appoint a physician thereto, to be paid as herein provided: *Provided*, That the cost of the said building shall not exceed two thousand (2,000) dollars: *Provided, further*, That no physicians so appointed to any of the hospitals, shall charge for his services more than one-half the usual fees.

33. Penalty for refusal to perform duty. Ib. 31.
34. Annual estimate to be sent to the Comptroller. Ib. 134.
35. Term of office—vancancies how filled. Ib. 134, 374.
36. Commissioners to provide rooms for County Auditor and Treasurer. Ib., 275.
37. To provide medical aid for sick poor. Ib., 421.
38. To provide hospital accommodation when needed.—Physicians fees. Ib.

SEC. 39. That if, at any time, the Court House of any County in this State shall be in course of reconstruction or repair, or from any other cause shall not be in condition to be occupied, it shall be the duty of the County Commissioners for such County to furnish suitable rooms for the accommodation of the Courts and public officers.

SEC. 40. The County Commissioners of each County shall, on or before the fifteenth day of December in each year, report to the General Assembly all accounts chargable to their respective Counties, that have been allowed and settled; the number and amount of orders drawn upon the County Treasurer; the taxes levied and collected; the amount expended for rebuilding or repairing the Court house, jail, poor house and bridges; in fact, a detailed account of all their doings. And upon failure so to report, they shall be fined in a sum not less than fifty, nor more than two hundred dollars.

SEC. 41. That in all cases where the County Commissioners refuse to approve the bonds of any County officers, the said officers may refer the same to the Attorney General, and, if approved by him, they shall be accepted by the County Commissioners.

SEC. 42. It shall be the duty of the County Commissioners of each County in this State, in pursuance of the authority conferred upon them by law, to provide, as soon as practicable, in their County, such buildings as may be needed for the accommodation of the poor of such County; said buildings shall have connected with them sufficient tillable land to give employment to such persons, able to work, as may come upon the County for support; and said buildings and land shall be known as the Poor House and Farm of said County.

SEC. 43. The County Commissioners shall, until otherwise provided by law, be Overseers of the County Poor House and Farm, and shall have power and authority to make all necessary rules and regulations for the government of the same, and to appoint a Superintendent, with such assistants as may be needed. They shall also have power, and it shall be their duty, to provide such employment as will be best suited to the inmates of the Poor House; and to see that every such poor person, able to work, is employed at some kind of labor; and to dispose of all articles manufactured, and produce raised on said Farm, in such manner as may be most profitable: *Provided*, That the proceeds accruing from sales of produce, from rents or other sources, shall be faithfully appropriated to the support of the poor in said County: *And provided, further*, That no unusual or cruel punishment shall ever be allowed in any Poor House in this State.

SEC. 44. Legal settlements may be acquired in any County, so as to oblige such County to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, namely:

1st. A married woman shall follow and have the settlement of her husband, if he has any within the State; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

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39. To provide rooms for Courts and officers in certain cases. 12, Stat., 908.

40. To report annually to General Assembly,—penalty for neglect. 14, Stat., 607.

41. Bonds of officers may be referred to Attorney-General, if County Commissioners fail to approve. 14, Stat., 70.

42. County Commissioners to provide poor houses and Farms Ib. 369.

43. To be Oveseers of poor, with power to appoint Superintendent, &c Ib.

44. How legal settlement acquired in a County. Ib., 370.

2d. Legitimate children shall follow and have the settlement of their father, if he has any within the State, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

3d. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the State; but neither legitimate nor illegitimate children shall gain a settlement by birth in the County where they may be born, if neither of their parents then has a settlement therein.

4th. Any person of the age of twenty-one years being a citizen of this or any other of the United States, who has lived for three successive years in any County, and who has during that time maintained himself and family, shall be held to have acquired a legal settlement therein.

SEC. 45. It shall be the duty of the County Commissioners of each County in this State to appoint, annually, one or more persons, who shall be known as the Overseers of the Poor in the County. It shall be the duty of said Overseers to look after and care for the indigent, old and infirm, and all other destitute persons within the limits of the County, and said Overseers shall have authority to send any poor person who may become a charge upon the County, to the County Poor House, subject to such conditions as may be established by the County Commissioners.

SEC. 46. If the Overseers of the Poor of any County shall refuse or neglect to provide for any such person who shall ask for relief, or who shall be reported to them as needing and entitled to receive relief, it shall be the duty of the County Commissioners of said County, and they shall have the power, after investigation, either upon the complaint of the person asking relief, or upon the complaint of any resident of said County, to commit such poor person to the County Poor House.

SEC. 47. The Overseers of the Poor, in their respective cities or Counties, shall provide for the immediate comfort and relief of all persons resid ng or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the city or County of their lawful settlement; the expenses whereof, incurred within three months next before notice is given to the place to be charged, as also of their removal, or burial, in case of their death, may be recovered by the city or County incurring the same, in an action at law, against the city or County liable therefor, to be instituted within two years after the cause of action arises, but not otherwise.

SEC. 48. The Overseers of the Poor of any city or County may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the Overseers of the city or County where his settlement is supposed to be, and requesting them to remove him, which they shall do by a written order directed to any person therein designated, who may execute the same.

SEC. 49. If such removal is not effected by the last mentioned Overseers within one month after receiving the notice, they shall, within the said one month, send to one or more of the Overseers, requesting such removal, a written answer,

45. Commissioners to appoint Overseers of poor, Annually. Duties of Overseers. Ib.

46. Proceedings if Overseers of Poor neglect duty. Ib.

47. Overseers to provide for Poor of other Counties; expenses, how recovered. Ib.

48. To notify Overseers of proper County and request removal. Id., 371.

signed by one or more of them, stating therein their objections to the removal; and if they fail to do so, the Overseers who requested the removal, may cause the pauper to be removed to the city or County of his supposed settlement, by a written order, directed to any person therein designated, who may execute the same; and the Overseers of the city or County to which the pauper is so sent, shall receive and provide for him; and such city or County shall be liable for the expenses of his support or removal, to be recovered in an action by the city or County incurring the same, and shall be barred from contesting the same question of settlement with the plaintiff in such action.

SEC. 50. The notification and answer mentioned in the two preceeding Sections may be sent by mail; and such notification or answer, directed to the Overseer of the Poor of the city or County intended to be so notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the Overseer to whom it was directed at the time when it is received at the post office of the city or County to which it is directed, and in which the Overseer resides: *Provided*, That said letter of notification be registered.

SEC. 51. Whoever brings into and leaves any poor and indigent person in any city or County in this State, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with the intent to charge such city or County with his relief or support, shall forfeit a sum not exceeding one hundred dollars for such offence, to be recovered in any proper action; to the use of such city or County.

SEC. 52. The County Commissioners shall have the power, if the convenience or necessities of their County demand it, to establish additional Poor Farms in said County: *Provided*, That when such additional Poor Farms are established, they shall be located in portions of said County where they will be most convenient to the people at large.

SEC. 53. The city authorities of Charleston and Columbia shall be allowed, and it shall be their duty, to provide for the care of the poor within the limits of their respective cities, and the County Commissioners of Charleston and Richland Counties shall, when they levy a general poor tax for their Counties, except from the payment of the same the said cities of Charleston and Columbia: *Provided*, That the aforesaid authorities of the cities of Charleston and Columbia shall have made adequate provision for the support of their poor.

The Overseers of the Poor of each city and County in this State shall, on or before the fifteenth day of October of each year, make and return to the Secretary of State a statement of the paupers in each city or County as they were during the year ending the thirtieth day of September preceeding, which return shall contain true and correct answers to the following inquiries: What number of persons have been relieved or supported by your County (or city) during the year ending September 30? Of those, how many have a legal settlement in your County or city? How many are foreign born? How many colored? How many white? Have you a Poor House? What number of acres of land is attached to your Poor House? What is the present estimated value of your Poor House establishment? Real estate? Personal? What number of persons have been supported in your Poor House

49. Proceedings if request for removal be not complied with. Ib.
50 Notice may be sent by mail: Proviso. Ib.
51. Penalty for bringing in pauper Ib.
52 Commissioners may establish additional poor houses; Proviso. Ib.
53. Charleston and Columbia may provide for their poor.

during the whole or any part of the year? What is the average number supported in the Poor House? What is the average weekly cost of supporting each pauper in the Poor House? What number of persons have been inmates of your Poor House who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your Poor House? What was the kind and quantity of crops raised on the Poor Farms? The value of that sold? The estimated value of that retained for use on the Farm? How many persons, including their families, have you supported out of the Poor House during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of the Poor House? How many have you aided out side Poor House How many have you relieved who were insane? How many who were idiots? What number of your poor, supported at the public charge, have been made dependent by intemperance in themselves? What number by intemperance in those who ought to have been their supporters? What is the total net cost of supporting or relieving the poor in your County or city during the year, including interest on your Poor House establishment? How many are supported in your Poor House at the present time? How many are supported out of the Poor House at the present time? How many are assisted out of the Poor House at the present time? They shall, at the same time, make correct returns of children in such County or city, under fourteen years of age, who are supported at the public charge, specifying therein the name, age, sex and color of each. And the Secretary of State shall furnish County Commissioners of every County, and the Overseers of the Poor of each city in the State, with blank forms of returns, which shall contain, in substance, the foregoing interrogatories.

The Secretary of State shall, on or before the fourth Tuesday in November of each year, make out an abstract of the returns made to him, together with such explanatory remarks as he deems proper, and, through the Governor of the State, transmit the same to the Legislature.

SEC. 54. That the County Commissioners of the several Counties in the State are authorized, whenever, in their judgment, it is necessary, to appoint one or more physicians, whose duty it shall be to furnish medical aid to the indigent sick in their respective Counties; and whenever accounts are rendered for the performance of such duty, the County Commissioners are hereby instructed to examine said accounts, and, if found correct, to audit the same, and give a warrant on the County Treasurer for their payment.

SEC. 55. That the County Commissioners of the respective Counties of this State are authorized and required to provide suitable hospital accommodations in connection with the Poor House at or near the County seats of their respective Counties, where the indigent sick poor may receive medical and sugical aid, free of charge, and to appoint physicians thereto, except the County of Charleston, where the County Commissioners are hereby authorized and required to cause to be built at or near Cordesville, Parish of St. John's Berkeley, a hospital for the indigent sick poor, and to appoint a physician thereto, to be paid as herein provided: *Provided* The cost of the said building shall not exceed two thousand (2,000) dollars: *Provided, further*, That no physician, so appointed to any of the hospitals, shall charge for his services more than one-half the usual fees.

SEC. 56. That in case any person shall be so poor as to become chargeable to

53. Overseers of poor to make annual return to Secretary of State. Nature of return. Ib.
54. Commissioners to appoint, and audit accounts of physicians for poor. 14, Stat. 421
55 Commissioners to provide hospital accommodations except in Charleston City, &c., Ib.

the County or city wherein he has a legal settlement, which person has a father, or grandfather, or mother, or a grandmother, or a child, or a grandchild, of sufficient ability to relieve such poor person, it shall be lawful for the County Commissioners, upon complaint made by any citizen of the County or city, to order some one or more, or all of such relations, to allow the poor person so much, by the week, as they shall think fitting, and in case of refusal to pay the same, it shall be lawful for any Trial Justice of the County, by his warrant under his hand and seal, directed to any of the Constables, to levy the same by distress and sale of the goods of such person or persons refusing to pay; and the several Constables, or any of them, are required and commanded to execute all such warrants.

SEC. 57. That the County Commissioners shall have power to demand and receive all such gifts and legacies, and all such fines and forfeitures, and any other moneys or things whatsoever, as are given for the use of the poor, and, in case of refusal to deliver or pay the same, to commence and prosecute any lawful suit or action for the recovery thereof.

SEC. 58. That in case any poor children shall be chargeable to any County, it shall and may be lawful for the Commissioners of such County to bind any such child or children out to be an apprentice, until every male child shall arrive to the age of twenty one years, and every female until she shall arrive unto the age of eighteen years, or be married.

SEC. 59. That the County Commissioners shall have power to bind out to service illegitimate children in all cases where such children are likely to become chargeable to the County, or are liable to be demoralized by the vicious conduct and evil example of their mothers, or other persons having the charge of them; and it shall be the duty of the County Commissioners in each and every County of this State, upon information made to them that any illegitimate child, above the age of five years, is likely to become chargeable to the County, or from the vicious conduct and evil example of the mother of the said child, or other persons having it in charge, is likely to become demoralized and brought up in vice and idleness, to cause such child to be bound to service, in charge of some person of good character: a female child, until she attains the age of eighteen years or marries, and a male child, until he attains the age of twenty-one years.

SEC. 60. That upon information, as provided in Section 59, it shall be lawful for any one of the County Commissioners to issue his warrant, directed to any Sheriff or Constable, commanding him to bring any such child before the Board at the first meeting thereafter; and the said officers are hereby required to execute such warrant, and shall receive therefor the same compensation as for other arrests, to be paid by the County.

SEC. 61. That the moneys remaining due, on any recognizance given for the maintainance of any illegitimate child, at the time such child shall be bound to service, shall be paid into the hands of the County Commissioners, for the benefit of such illegitimate child.

SEC. 62. That the County Commissioners shall be authorized to send all pauper lunatics, idiots, and epileptics, in their several Counties, to the Lunatic Asylum.

56. Outside poor may be assisted by an allowance. 2, Stat., 595.

57. Commissioners empowered to receive gifts, legacies, fines and forfeitures, 5. Stat. 175.

58. Commissioners may bind out poor children. 2, Stat., 590—5, 176.

59. May bind out illegitimate pauper children 2, Stat., 595—6, 410, 432.

60. May arrest illegitimate pauper children, by warrant. Ib.

61. Moneys due on recognizance in bastardy to be collected by Commissioners. Ib., 411.

62. Commissioners may send pauper lunatics to Asylum. Ib., 323, 382.

SPECIAL DUTIES REGARDING ROADS.

SEC. 63. The Boards of County Commissioners have power, and they are hereby authorized, to appoint Special Commissioners to lay out public highways in those cases where they are satisfied that the road applied for is important: *Provided, however*, That the said Commissioners shall have no power to open any new road until they shall have given three months' previous notice, by advertisement, in the settlement through which the intended road is to be opened.

SEC. 64. The decisions made by Special Commissioners may be appealed from, and reviewed in the same manner, and with like authority, as is allowed by law from the acts of the County Commissioners. The roads so to be laid out by such Special Commissioners, or the same as settled on appeal, shall be recorded, opened and worked as public highways of the towns, cities or County in which they are respectively situated, in the same manner as other highways of the town, city or County are required by law to be recorded, opened and worked.

SEC. 65. The County Commissioners of the several Counties shall divide their Counties into highway districts, each district to contain not less than ten miles of public highways, nor more than forty miles, to be convenient for repairing highways, and may, from time to time, alter the same; and they shall appoint for each highway district a Surveyor of Highways, to superintend the expenditure of the highway tax and money appropriated for improvement of highways in his district, and to take charge of, and keep in repair, at all times, the highways in his district.

SEC. 66. That it shall be the duty of the County Commissioners in their respective Counties to cause all roads heretofore laid out or hereafter to be laid out, leading directly from any part of this State to Charleston, Georgetown, Columbia, Camden, Hamburg or Cheraw, to be made and cleared thirty feet wide, and all other roads shall be cleared twenty feet wide.

SEC. 67. That any Surveyor of Highways neglecting to cause said roads to be posted and numbered, and to have pointers erected as aforesaid, shall be liable to pay the sum of ten dollars for each and every such neglect, to be recovered by indictment in the Court of General Sessions of the County wherein the same occurs, to be paid, when collected, to the Board of County Commissioners of such County: *Provided*, That no Surveyor shall be liable to said penalty who puts up said pointers at such times as he works his road division.

SEC. 68. That the Board of County Commissioners in each and every County shall have power to discontinue any road now established or hereafter to be established by law, after three months' public notice has been given, by advertisement, in the settlement through which the road proposed to be discontinued passes: *Provided*, That no objection shall be made thereto. But, in case any objection should be made to the closing up or discontinuing of the said road, then the same shall be kept open and repaired until discontinued according to law.

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63. Commissioners to appoint Special Commissioners to lay out highways. 14, Stat., 130.,Con. Art., 4, 19.

64. Of the opening of Roads, &c. 14, Stat., 131.

65. Commissioners to appoint Highway Surveyors:—Their duties, &c. 9, Stat., 559,—14. 131.

66. Width of roads in certain parts of the State. 9, Stat., 563.

67. Penalty for neglect of certain duties by Surveyors. 11. Stat., 239.—14. 666.

68. Commissioners may discontinue roads. 9, Stat., 587.

SEC. 69. It shall be lawful for the County Commissioners in the Counties comprising James' Island, John's Island, Wadmalaw, Edisto, St. Helena, Ladys Island and Hilton Head, to authorize and permit such persons as they, in their discretion, may think proper, to put up gates on the public roads that may pass through their grounds; such permission in every case to expire, unless renewed, at the end of two years: *Provided*, That no new gate be allowed unless, in the judgment of the Commissioners, the same be necessary.

SEC. 70. If any person shall willfully cut or destroy any gate which may be put up by the authority of the Commissioners in pursuance of the last Section, whilst the same is kept in good order, such person shall be fined in the sum of twenty dollars, to be recovered by warrant of distress under the hands of any two of the Commissioners for the County. And if any person shall willfully leave open any gate as foresaid, such person shall be liable to be fined in the sum of twenty dollars, to be recovered as aforesaid.

SEC. 71. That in the event the corporators of any incorporated town or village in this State shall refuse or neglect to organize and appoint the officers required by their Act of incorporation, or refuse or neglect to carry out, in good faith, the obligations imposed by their Act of incorporation, in regard to roads or streets, the County Commissioners, in whose County such town or village, or other incorporated body, shall be located, shall be authorized and required to take charge of all such roads and streets, together with all such road hands as may reside within the limits of such incorporation, and require the same performances of all residents within such limits, as they are authorized to do within their Counties generally.

SEC. 72. The County Commissioners of the several Counties shall divide Counties into highway districts, each district to contain not less than ten miles of public highways, nor more than forty miles, to be convenient for repairing highways, and may, from time to time, alter the same; and they shall appoint for each highway district a Surveyor of Highways to superintend the expenditure of the highway tax and money appropriated for improvement of highways in his district, and to take charge of, and keep in repair, at all times, the highways in his district. Said Surveyor of Highways shall be removable at pleasure. He shall be responsible to the County for any damage which may be sustained within his district, through fault or neglect in the discharge of his duty. Said Surveyor of Highways shall give bond to the County, with good and sufficient sureties, to be approved by the County Commissioners, in double the amount of money to be expended in his district, for the faithful discharge of his duties.

SEC. 73. That, for the purpose of keeping in repair highways and bridges, the County Commissioners of each County shall, on or previous to the first day of January, assess a tax of eighteen cents, if so much be necessary, on every hundred dollars of the lists of the County, to be paid in money or labor, at the option of the tax payer, and laid out in repairing highways and bridges; and they shall, annually, on or before the first day of January, make out a tax bill for each Surveyor of Highways, containing the amount of the tax to be laid out by him in his district, with the amount of each person's tax annexed to his name, accompanied

69. May authorize the erection of gates in certain localities. Ib., 500.
70. Regulations regarding such gates. Ib.
71. Performance of road duty in towns and villages. 13, Stat., 251.
72. Commissioners to divide County into Highway districts. 14, Stat., 666.
73. May levy tax for repairs to roads and bridges. Ib., 667.

with a warrant, signed by the Chairman of the Board, authorizing such Surveyor to collect such tax ; and they shall deliver the several tax bills to the respective Surveyors, and take their receipt for the same.

SEC. 74. On any extraordinary occasion, when any bridge or highway shall be destroyed or impaired so as to require immediate repairs, or shall be obstructed so as to require immediate labor to remove the obstruction, it shall be the duty of the Surveyor, forthwith, to cause the highway or bridge to be repaired, or the obstruction removed ; and he may, for that purpose, call upon and notify any inhabitants of the district to afford him the necessary aid, or may hire other laborers, or employ other means to open or repair the highways and bridges ; and, in such case, the notice shall be deemed sufficient to any person owing taxes, payable in money, if such notice shall be given six hours previous to the time when he is required to appear and labor. If any person shall, in such case, perform labor more than sufficient to pay the taxes due from him,or, if a person not indebted for taxes shall perform labor, the amount of such labor, or the balance, may be accredited to such person towards his highway tax the succeeding year.

SEC. 75. If, on any such occasion as specified in the preceding Section, any Surveyor shall, for the space of twelve hours after application made to him for that purpose by any citizen residing within his district, neglect to call upon the inhabitants of his district, or use the proper means to repair or open the highway or bridge which may be out of repair or obstructed, he shall forfeit and pay to the County Commissioners of the County, to be expended in repairing highways in such district, the sum of twenty five dollars, to be collected in the name of the County, unless such Surveyor shall show sufficient reason for neglect.

SEC. 76. Each Surveyor shall keep full and regular accounts of all labor performed, and all moneys received and expended in his district, and of the labor that may have been performed by any persons over and above their taxes, and make return of his accounts to the County Commissioners, annually, in the month of November. And it shall be the duty of each Surveyor of Highways to pay over to the County Commissioners of the County any moneys which may remain in his hands unexpended ; and any moneys which may be so received from the Surveyor, shall be paid over by the County Commissioners to the succeeding Surveyor, to be expended in the same district. And when any persons shall have overpaid their taxes, in labor or otherwise, the balance shall be accredited to such persons on their taxes for the succeeding year. When any Surveyor of Highways shall resign or be removed from office, he shall also make such return to the County Commissioners as required in this Section, and turn over all moneys, books and papers pertaining to his office, to the County Commissioners, or to his successor in office, as they may direct.

SEC. 77. If any Surveyor shall have failed to collect the taxes contained in his tax bill, as required by law, or if he shall fail to pay over any moneys which he may have collected and not expended, the County Commissioners shall proceed against him upon his official bond.

SEC. 78. If any person receive or suffer bodily injury, or damage in his property through a defect or want of repair or sufficient railing in or upon a highway, causeway or bridge, he may recover, in an action, of the County by law obliged

74. Surveyors may call out citizens to make extraordinary repairs. Ib.

75. Penalty if repairs be not effected. Ib., 668.

76. Surveyors to keep accounts, and make return to Commissioners. Ib.

77. Surveyors bond liable, when. Ib.

78. Traveller may recover damages if injured by defect in roads. Ib.

to repair the same, the amount of damage sustained thereby, if such County had reasonable notice of the defect, want of repair or of insufficient railing, or if the same had existed for the space of twenty-four hours previous to the occurrence of the injury or damage; but no such injury or damage shall be recovered by a person whose carriage and load thereon exceeds the weight of six tons.

SEC. 79. If, before the entry of an action provided for in the preceeding Section, the County Commissioners tender to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff does not accept the same, and does not recover upon his trial more than the sum so tendered, the defendant shall recover costs.

SEC. 80. If a County neglect to repair any of the highways or bridges which, by law, it is obliged to keep in repair, or neglect to make the same safe and convenient, such County shall be liable to indictment and fine, as the Court in its discretion may order. The fine imposed in such a case, shall be certified to the County Commissioners by the Clerk of the Court, and they shall proceed to collect the same from the Surveyor or Surveyors of the highway district or districts charged by this Chapter with the duty of superintending and keeping said highways or highway in repair; the same when collected, shall be laid out in the repair of highways and bridges in the County.

SEC. 81. Each person who shall furnish work on the highways, in payment of his highway tax, assessed by the County Commissioners, shall be allowed, for a good hand, at the rate of ten cents for each hour. It shall be the duty of the highway Surveyor of the district to make such allowance for the use of teams, carriages and tools, as shall be equitable and just.

SEC. 82. All able bodied male persons between the ages of eighteen and forty-five years shall be liable, annually, to perform on the public highways and roads not less than three and not more than five days' labor, under the direction of the highway Surveyor of their district: *Provided*, That if any person, being warned to work upon the highways, shall pay to the highway Surveyor, in the district in which he may reside, the sum of one dollar per day for each day required, such sum shall be received in lieu of such labor, and shall be applied by the said highway Surveyor to the construction and repair of the highways and roads in the district. And should any person refuse either to work on the highways and roads or to pay the fine imposed as a penalty for refusing to work upon the highways and roads, according to the direction of said Commissioners, the said persons shall be deemed guilty of a misdemeanor, and, on conviction thereof, punished by imprisonment in the County jail for the same, for a term not exceeding thirty days.

SEC. 83. That the County Commissioners in this State are authorized and empowered to employ the ordinary road labor in the construction and repair of all bridges over the rivers or creeks of this State, which constitute the boundary line between Counties, if in their opinion the same shall be sufficient, and shall assess their respective Counties, whenever in their judgment the said ordinary road labor is insufficent. And where any such bridge exists or shall be hereafter built, it shall be the duty of the Boards adjoining to divide the same by measurement in the centre, and each Board shall be responsible for the good order of the half next

79. How damages may be recovered. Ib.

80. County liable to indictment and fine. Ib.

81. Rate of valuation of labor. Ib.

82. Who liable to road duty: Commutation; Refusal, Penalty. Ib.

83. Repairs to bridges between Counties; Division of expense,. 9, Stat. 562,—12, 181.

adjoining the County in which it lies. And whenever it becomes necessary to build a new bridge or to replace, entirely, an old one which has been carried away or destroyed, it shall be the duty of the Boards of the two Counties to replace the same.

SEC. 84. That the County Commissionsers of the several Counties of the State shall have and exercise the same powers over the navigable streams, water courses and cuts, within the limits of their respective Counties, as they have over the highways and bridges therein, except as the same are herein modified.

SEC. 85. It shall be the duty of the aforesaid Surveyors of Highways to see and ascertain, from time to time, that the said water courses and cuts, and the mouths or entrances thereof, are open and free to the customary navigation, for boats not drawing more than four feet of water, except at such times as may be necessary to close the same for the purpose of repair or other necessary work; but in no case shall the said water courses or cuts be closed so as to prevent the free passage of such boats for a longer period than two consecutive months, or without thirty days' previous notice, signed by the County Commissioners, and published in at least one newspaper in the County wherein such water courses or cuts may be situated; and if the said water courses or cuts are within the limits of Charleston County, then such notice shall be published in at least one of the daily newspapers in the city of Charleston.

SEC. 86. That the Board of County Commissioners shall have full power and authority to appoint Special Commissioners who may cause to be opened any new channel through such projecting points of marsh land as impede and delay the navigation of the said water courses and cuts, and the proprietor or owner of the said marsh land shall be entitled to such reasonable compensation for the appropriation of the said land to the public use as may be deemed a fair equivalent by three discreet and disinterested citizens, to be selected by the mutual consent of the said Special Commissioners and the said proprietor or owner.

SEC. 87. That it shall not be lawful for any person to keep up or erect any dam, except as provided for by Section 10 of this Chapter, across any river which the Legislature has ordered to be made navigable, or for improving which the Legislature has made any appropriation, so as to obstruct the passage of boats or rafts of timber and lumber therein; and in case any dam, hereafter to be erected, shall not be immediately taken down and opened, when required by the County Commissioners, the same shall thenceforth be regarded and taken to be a public nuisance, and shall and may be abated as such; and the person erecting or keeping up the same shall, on conviction thereof, be fined at the discretion of the Court, in a sum not exceeding five hundred dollars, for the use of the navigation of the river where the said nuisance exists.

SEC. 88. That no road, bridge or ferry, shall be established by law, unless the person or persons petitioning for the same shall have given notice to the County Commissioners in the County or Counties in which the said road, bridge or ferry is intended to be established, at least six months before the session of the Legislature, and shall bring to the Legislature a certificate of the same, from the Board of County Commissioners.

84. Power of Commissioners over streams, water courses, &c Con. Art. 4, 19.

85. Highway Surveyors to keep streams open for navigation 12. Stat., 518.

86. Commissioners may open new channels. 14. Stat., 130.

87. When opened, such channels not to be obstructed. b. Stat., 219.

88. Notice of application for charter of roads, &c., to be given to Commissioners. 9, Stat., 443.

SEC. 89. It shall be the duty of the County Commissioners through whose Counties the State road passes, to see that the same is kept in good traveling order and condition at all times during the lease thereof, and if it is not, they shall report the fact to the Comptroller General, who shall cause to be put in suit the bond, of the lessee or lessees, and shall take other proceedings against him or them as he shall deem necessary and proper.

SEC. 90. Where any owner of an estray shall appear and prove his property within the time directed for advertising, it shall be lawful for any Trial Justice and he shall cause the same to be publicly advertised for ten days, and sold on a credit of six months, except the costs to be paid in cash : and the purchaser shall give his note, with approved security, to the Trial Justice, in the name of the County Commissioners in the County wherein such estray shall be taken up ; which note the said Trial Justice shall deliver immediately to the said County Commissioners for the County in which such estray shall be taken up, who shall have power, in default of payment, to sue for and recover the same.

SEC. 91. If any person shall put in a just and lawful claim to such estray at any time after the sale and before the note becomes due, the County Commissioners are hereby directed to give the note to the claimant, on his paying the customary fees ; but if no such owner shall appear, the Commissioners shall cause the amount of the same to be collected and appropriated to the repairs of the high roads and bridges in the highway district where such estray shall be taken up. And in case any part of the moneys aforesaid remains unappropriated, in the hands of the Commissioners, they shall appropriate the same to the use of the poor.

SEC. 92. There shall be appointed by the Governor, and confirmed by the Senate, one officer for each County in the State, to be be named and designated a Jury Commissioner, who, with the County Auditor and Chairman of the Board of County Commissioners, shall constitute a Board of Jury Commissioners for the County. Said Jury Commissioner shall hold his office for two years, unless sooner removed by the Governor.

SEC. 93. The County Commissioners of each County shall provide all books necessary for keeping the records of the Probate Court : also, a seal and necessary office furniture : *Provided*, Said furniture shall not exceed in cost the sum of one hundred dollars.

SEC. 94. Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States, or by the Constitution and laws of this State, or shall be injured in his person or property because of his exercise of the same, may claim, and prosecute the County in which the offence shall be committed for any damages he shall sustain thereby ; and the said County shall be responsible for the payment of such damages as the Court may award, which shall be paid by the County Treasurer on a warrant drawn by the County Commissioners as soon as a certified copy of the judgment roll is delivered to them for file in their office.

SEC. 95. It shall be lawful for the County Commissioners of the County against which damages shall be recovered under the provisions of this Chapter to bring suit or suits, in the name of the County, against any and all persons engaged, or

89. Commissioners to keep State road in order. Penalty. 12 Stat., 412.
90. Commissioners to receive note give in purchase of an estray. 11 Stat., 30.
91. To give up note, if owner appear and claim estray, on payment of fees. 5 Stat., 137
92. Chairman of Board to be one of Jury Commissioners. 14 Stat., 690.
93. Commissioners to provide books &c. for Probate Court. Code, 521.
94. County to pay damages to person injured in person or property. 14 Stat., 565.
95. Commissioners to prosecute offenders, violators of the peace. Id. 564.

in any manner participating in said mob or riot, and against any Constable, Sheriff, Trial Justice, or other officer charged with the maintenance of the public peace, who may be liable, by neglect of duty, to the provisions of this Chapter, for the recovery of all damages, costs and expenses incurred by said County, and such suit shall not abate or fail by reason of too many or too few parties defendant being named therein.

SEC. 96. It shall be the duty of the County Commissioners in this State to furnish, at all times, blankets and such other bedding as shall be necessary for prisoners confined in jail in their respective Counties; and prisoners confined on a criminal charge shall be provided with at least two blankets in the winter season.

SEC. 97. The several Boards of County Commissioners are authorized and required to make any alterations and additions deemed advisable, or which may become necessary, to any Court house or jail now erected, or hereafter to be built, in their several Counties.

SEC. 98. From and after the passage of this Act, the County Commissioners of the various Counties in the State shall remove their imbeciles from the State Lunatic Asylum, upon due notice from the Superintendent to the said County Commissioners as to the number of imbeciles confined in the institution from their respective Counties, and shall hereafter take care of all such persons in their respective County poor houses.

SEC. 99. All the powers and duties heretofore conferred upon the Commissioners of Roads of the various Districts of this State, in relation to the license and sale of intoxicating liquors, shall be, and they are hereby, conferred upon the County Commissioners.

SEC. 100. That Section 2 of an Act Act to provide for the construction and repairs of public Highways be so amended as to read: "That the bridges be repaired under the supervision of the County Commissioners, and that the expense of the same be paid out of any moneys in the County Treasury; and that all the work on said bridges, given out by the County Commissioners, when the amount shall exceed the sum of one hundred dollars, shall be done by contract: and the Commissioners are hereby required to advertise the same in at least one of the papers of the County; that said proposal shall, in all cases, be accompanied by two or more sufficient sureties; and the County Commissioners shall have the right to reject any or all bids if, in their judgment, the interest of the County so require."

SEC. 101. That the Sections of said Act relating to the appointment and duties of Highway Surveyor be so amended as to abolish the office of Highway Surveyors, and to confer the duties of the same upon the County Commissioners: *Provided*, That if the County Commissioners of any County in this State fail to comply with the provisions of this Section, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine not exceeding five hundred dollars each, and to imprisonment not exceeding six months, or either, or both, at the discretion of the Court of General Sessions of their respective Counties: *Provided, further*, That all taxes levied for the repair of highways and bridges, in each County, shall be collected and paid at the same time as the general taxes to the County Treasurers.

96. Commissioners to furnish bedding for persons in jail. 11 Stat., 225—12. 908—14, 274.
97. May make alterations in Court house, and jail. 11 Stat., 156.
98. Imbeciles to be removed from State asylum to Counties. 15 Stat., 67.
99. Commissioners to grant licenses. Ib. 139.
100. Work on bridges to be given out by contract, when, Ib. 215.
101. Office of highway Surveyor abolished; Commissioners to perform duty of. Ib. 215.

CHAPTER IX.

OF THE

OFFICE AND JURISDICTION OF PROBATE JUDGES.

SEC. 1. There shall be an election for the office of Judge of Probate in each County, on the first Tuesday after the first Monday of November, A. D., 1874, and on the same day in every second year thereafter.

SEC. 2 In the event that a vacancy shall occur in the office of Judge of Probate, whether from death, resignation, disqualification or other cause, the Governor shall have full power to appoint some suitable person, who, on being duly qualified according to law, shall be entitled to enter upon and hold the office for the unexpired term of the former incumbent, and shall be subject to all of the duties and liabilities incident to said office during his term of service: *Provided*, That no such unexpired term, for which an appointment is made, shall exceed one year.

SEC. 3. The Judges of Probate in the several Counties of the State, before receiving their commissions, shall enter into bond, to be executed by them, and any number of sureties, not exceeding twelve nor less than two, to be approved by a majority of the Board of County Commissioners, for the faithful discharge of the duties of their office, to wit: Judge of Probate for Charleston County in the sum of ten thousand dollars: the Judges of Probate for the other Counties, each in the sum of five thousand dollars. They shall qualify within thirty days after the election is declared.

SEC. 4. It shall not be lawful for any of the Judges of Probate in this State to grant a final discharge to any executor or executrix, administrator or administratrix, trustee, guardian or committee without he, she or they first giving public notice in some County newspaper, (if there should be no newspaper published in the County, then in some public journal having the greatest circulation therein,) for the space of at least one month, that on a day certain he, she or they will apply to the Judge of Probate for the County where his, her or their bond is filed, for a final discharge: *Provided*, The said publication shall be tri-weekly in the cities of Charleston and Columbia.

SEC. 5. It shall be the duty of the Judge of Probate, when applied to, to search for and examine any book, record or paper belonging to his office, and to furnish any person wanting the same with a copy or copies of any part thereof, or of the

1. Judge of Probate, when elected, and term of office. Con. Art. 4, 29.—14 Stat., 338.
2. Governor to fill vacancy in office.—Ib. 374.
3. Judges of Probate to give bond, to be approved by County Commissioners. Ib., 19.
4. Not to discharge executors or administrators without public notice. Ib., 263.
5. To search records, and furnish copies, &c. Ib. 63.

whole or any part of any proceedings touching any estate or estates in his care or custody as Judge of Probate aforesaid, and to certify the same; for which respective services he shall be allowed at the rate of nine cents for each copy sheet the same may contain, and fifty cents for every certificate he shall so give.

SEC. 6. Courts of Probate are hereby established in each of the several Counties in this State, which shall hold a session on the first Monday of each month at or near the court house, and continue thereafter so long as the business may require.

SEC. 7. The Court of Probate shall be a Court of Record, and have a seal, may appoint a Clerk, and may remove him at pleasure, and on failure of the Court to appoint such Clerk, the Judge of the Court may perform all the duties of Clerk.

SEC. 8. The Cerk of the Court of Probate shall keep a true and fair record of each order, sentence and decree of the Court, and of all other things proper to be recorded; and, on the legal fees being paid, shall give true and attested copies of the files and proceedings of the Court. All copies so attested shall be legal evidence in the Courts of this State.

SEC. 9. Every Judge of Probate shall keep the following books, (to be furnished by the County Commissioners,) each to be designated by its label, as follows, that is to say: 1st. "Wills," in which he shall enter a copy of all wills admitted to probate, together with the probate and certificate thereof. 2nd. "Inventories, Appraisements and Sales," in which he shall enter all such matters as are designated by the title. 3rd. "Returns," in which he shall enter all the accounts of the receipts and expenditures by executors, administrators and guardians, including the final settlement. 4th. "Real Estates," in which he shall enter all proceedings and orders in relation to the sale or division of real estates, from the petition to the bond of the purchaser, both inclusive. 5th. "Letters," in which he shall enter all letters granted, whether testamentary, of administration, or of guardianship. 6th. "Bonds," in which he shall enter bonds of administrators and guardians. 8th. "Cash Book," in which he shall open and keep a regular account with every individual or estate on whose account he has received any moneys, bonds, notes, stocks, choses in action, or other property of any description whatever, by virtue of his office, exhibiting fully everything so received by him, as well as all costs and charges against such estate, and disbursements in favor of the parties interested therein, or other disposition thereof, which book shall remain in his office as a public record, and be subject to public inspection 8th. "Journal," in which he shall enter every judgment, sentence, decree, determination, denial, and every other act done, or order made by him, in his official capacity, so as to constitute a complete journal of the current proceedings of his office. Each of the said books shall be furnished with a full and complete alphabetical index, in the surnames of the parties to the several matters therein contained.

SEC. 10. The manner of filing papers in the Judge of Probate's office shall be as follows, to wit:

The case shall be divided into convenient apartments, which shall be numbered from one upward. The papers relating to the same estate shall be wrapped in an envelope, as a package, and shall bear a number, and be endorsed in the name of the estate. A convenient number of packages shall be embraced in a strong enve-

6. When Courts of Probate to be held. Id., 82, 241.
7. Probate Courts to be Courts of Record. Gen. Stat., 525.
8. Duties of Clerk of Probate Court. Ib.
9. Books to be kept by Probate Courts. 11, Stat., 69.

lope, and constitute a bundle, bearing the number of the apartment of the case containing it. A complete alphabetical index shall be constructed with reference to the surname of deceased persons to whose estate the papers relate, and of executors and administrators; and opposite each name in such index shall be two columns, the one expressing the number of the apartment where the bundle is to be found, and the other expressing the number of the package in such bundle which contains the papers relating to the estate named in the index.

SEC. 11. At each stated session of the Probate Court, the Clerk thereof shall present an account to said Court of all moneys remaining therein, or subject to the order thereof, stating particularly on account of what cause or causes said moneys are deposited, which account, and the the vouchers thereof shall be filed in Court.

SEC. 12. Every Judge of Probate shall be responsible for the books and papers, and also for the furniture in his office; and upon his retiring from office, or upon his death, he or his representatives shall be bound to transfer all such books, papers and furniture to his successor, immediately after such successor shall have entered upon the duties of his office, under a penalty of one thousand dollars, to be recovered by indictment, and of imprisonment not exceeding one year. But, before surrendering such books, papers and furniture, the Judge of Probate so retiring from office, or his representatives, shall be entitled to require of his successor a receipt in writing therefor, which receipt shall specify the number and title of every book, and the number and description of every article of furniture, together with the order and condition of the books, papers and furniture: a duplicate of which receipt shall also be given, and shall, by the Judge of Probate retiring from office, or his representatives, be filed in the office of the Clerk of the Court of the County. And every Judge of Probate retiring from office, or his repesentatives, shall be liable to an action, in the name of his successor, for damages for any books, papers or furniture which shall have been proved to have been in his possession, and shall not appear by such receipt to have been transferred to his successor; which damages, when recovered, shall be appropriated to the replacing of such books, papers or furniture, or to the benefit of the parties who may have been injured by the loss of such books or papers; and an order for appropriating such damages shall be made by the Court before which such action shall be tried.

SEC. 13. Every Judge of Probate, in his County, shall have jurisdiction in all matters testamentary and of administration in business appertaining to minors and the allotment of dower, cases of idiocy and lunacy, and persons *non compos mentis*.

SEC. 14. The Judge of Probate shall have jurisdiction in relation to the appointment and removal of guardians of minors, insane and idiotic persons, and persons *non compos mentis*, and in relation to the duties imposed by law on such guardians, and the management and disposition of the estates of their wards. He shall exercise original jurisdiction in relation to trustees appointed by will in cases prescribed by law.

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10 Manner of filing papers—Indexes to be kept. Ib.

11. Clerks to file accounts of moneys in Court. 14, Stat., 17.

12. Judges responsible for effects of office—Liable to action for damages—Penalty for not transferring to successor. 11, Stat., 70.

13. Jurisdiction of Probate Judges, generally. Gen. Stat., 525.

14. Jurisdiction in relation to guardians. Ib. 526.

SEC. 15. He may exercise jurisdiction of all petitions for partitions of real estate where no dispute exists in relation to the title thereof; and when the title to such real estate is disputed, he shall refer the same to the Circuit Court for adjudication, unless the parties shall consent to his determination of the same. The probate of the will and the granting of the administration of the estate of any person deceased, shall belong to the Judge of Probate for the County in which such person was last an inhabitant; but if such person was not an inhabitant of this State, the same shall belong to the Judge of Probate in any County in which the greater part of his or her estate may be.

SEC. 16. All proceedings in relation to the settlement of the estate of any person deceased, shall be had in the Probate Court of the County in which his will was proved, or administration of his estate was granted.

SEC. 17. All procedings in relation to the property or estate of any person under guardianship shall be had in the Court of Probate of the County in which the guardian was appointed.

SEC. 18. No Judge of Probate shall act as such in the settlement of any estate wherein he is interested as heir or legatee, executor or administrator, or as guardian or trustee of any person; in every such case the Judge of Probate of any adjoining County shall have jurisdiction, and it shall be his duty, upon application, to attend at some term of the Court of Probate in which such case may be pending, which shall not interfere with the duties in his own County, and hear and determine such case.

SEC. 19. The Judge or Clerk of the Probate Court shall have power to administer all oaths necessary in the transaction of business before the Probate Court, and all oaths required by law to be administered to persons executing trusts under the appointment of said Court.

SEC. 20. Probate Courts may issue all warrants and processes, in conformity to the rules of law, which may be necessary to compel the attendance of witnesses, or to carry into effect any order, sentence or decree of such Courts, or the powers granted them by law.

SEC. 21. If any person shall refuse or neglect to perform any order, sentence or decree of a Probate Court, such Court may issue a warrant, directed to any Sheriff or Constable in the State, requiring him to apprehend and imprison such person in the common jail of the County: and if there is no jail of the County, then in the jail of the adjoining County, until he shall perform such order, sentence or decree, or be delivered by due course of law.

SEC. 22. When a witness whose testimony is necessary to be used before any Probate Court shall reside out of this State, or more than thirty miles from the place of holding Court, or, by reason of age or bodily infirmity, shall be unable to attend in person, the Court may issue a commission to one or more competent persons to take the testimony of such witness; and depositions taken according to the provisions of the law for taking depositions to be used on the trial of civil

15. Jurisdiction in relation to title to, and partition of real estate. Gen. Stat., 487, 526.
16. Settlement of estates must be in County where Will is proved. Code, 226.
17. Proceedings in relation to estates under guardianship to be had in Probate Court. Ib.
18. Judges not to act, if interested, but matter to be referred to Judge of next County. Ib.
19. Power to administer oaths conferred. Ib.
20. Power to issue warrants and processes. Ib.
21. In cases of contumacy, Judge may commit to jail. Ib.
22. Depositions may be taken, when. Ib., 527.

causes may be used on the trial of any question before the Probate Court where such testimony may be proper.

SEC. 23. When any Probate Court shall have first taken cognizance of the settlement of the estate of a deceased person, such Court shall have jurisdiction of the disposition and settlement of all the estate of such deceased person to the exclusion of all other Probate Courts.

SEC. 24. The jurisdiction assumed by any Probate Court in any case, so far as it depends on the place of residence or the location of his estate, shall not be contested in any suit or proceeding whatever, except in an appeal from the Probate Court in the original case, or when the want of jurisdiction appears on the record.

SEC. 25. When, by law, a guardian is required to be appointed of a minor, who is interested as heir or legatee, or representative of such heir or legatee, in any estate which is in a course of settlement, such guardian shall be appointed by the Probate Court before which such estate is in course of settlement; but afterwards, if the minor shall reside in another County, and is of the age of fourteen years, he may choose and have a guardian appointed in the County where he shall reside; and in that case, the powers of the first guardian shall cease. In all other cases, guardians shall be appointed by the Probate Court of the County where the persons for whom the guardian shall be appointed shall reside.

SEC. 26. The Probate Court by which a guardian shall be appointed shall have jurisdiction of the estate of the ward, and shall be alone authorized to permit the sale of such estate, and settle such guardian's accounts.

SEC. 27. Except as provided in the first Section, the Probate Court in each County shall appoint such times and places for holding Courts as shall be judged most convenient for all persons interested, and shall give notice of such times and places in one or more newspapers circulating in the County.

SEC. 28. The Probate Court shall be deemed open at all times for the transaction of ordinary business which may be necessary, when previous notice is not required to be given to the persons interested.

SEC. 29. A Probate Court may be adjourned as occasion may require; and when the Judge is absent at the time for holding a Court, the Clerk may adjourn it.

SEC. 30. Any person interested in any final order, sentence or decree of any Probate Court, and considering himself injured thereby, may appeal therefrom to the Circuit Court in the same County, at the stated session next after such appeal, and such appeal shall be granted by the Probate Court, if application be made and filed in the Clerk's office within fifteen days from the date of the decision appealed from.

SEC. 31. In all cases of appeal from the proceedings of the Probate Court, before such appeal shall be allowed, the person appealing shall give a bond to the satis-

23. Exclusive jurisdiction after once acquired. Ib.
24. Jurisdiction may not be impeached. Ib.
25. When minor may choose guardian. Ib.
26. Court to have jurisdiction of estates of wards. Ib.
27. Judges may appoint convenient times and places to hold their Courts. Ib.
28. Probate Courts to be deemed always open for ordinary business. Ib.
29. Courts may be adjourned by Clerk, in absence of Judge. Ib., 528.
30. Appeals from Probate Court to be to Circuit Court. Ib.

faction of the Probate Court, with a condition that he shall prosecute such appeal to effect, and pay all intervening damages and costs occasioned by appeal.

SEC. 32. In all cases of appeal, the appellant shall file in the Probate office his grounds of appeal, and cause a copy thereof to be served on the adverse party, at least twelve days before the time when the appeal is entered in the Circuit Court.

SEC. 33. The person appealing, shall procure and file in the Circuit Court to which such appeal is granted, a certified copy of the record of the proceedings appealed from, of the application and grounds for the appeal filed in the Probate Court, and of the allowance of the same, together with the proper evidence that notice has been given to the adverse party according to law.

SEC. 34. When an appeal is allowed by the Probate Court, all proceedings, in pursuance of the order, sentence or decree appealed from, shall cease until the judgment of the Circuit or Supreme Court is had; but if the appellant, in writing, waives his appeal before the entry thereof, proceedings may be had in the Probate Court as if no appeal had been taken.

SEC. 35. If the person appealing from the proceedings of the Probate Court, as provided in this Title, shall neglect to enter his appeal, the Circuit Court to which such appeal shall be taken, on motion, and producing attested copies of such appeal by the adverse party, shall affirm the proceedings appealed from, and may allow costs against the appellant.

SEC. 36. The final decision and judgment in cases appealed, as hereinbefore provided, shall be certified to the Probate Court by the Circuit Court or Supreme Court, as the case may be, and the same proceedings shall be had in the Probate Court as though such decision had been made in such Probate Court.

SEC. 37. No Judge of any Probate Court shall be admitted to have any voice in determining any appeal from his decision, or be permitted to act as attorney or counsel thereon, or receive fees as counsel in any matter pending in the Probate Court of which he is Judge: *Provided*, It shall be lawful for Judges of Probate to practice law in other Courts, in such cases as are not cognizable in the Courts of Probate.

SEC. 38. All proceedings in the Court of Probate shall be commenced by petition to the Judge of Probate for the County to whom the jurisdiction of the subject-matter belongs, briefly setting forth the facts or grounds of the application.

SEC. 39. The Supreme Court may, from time to time, make rules regulating the practice and conducting of business in the Courts of Probate, in all cases not expressly provided for by law.

SEC. 40. The County Commissioners of each County shall provide all books necessary for keeping the records of the Probate Court; also, a seal and necessary office furniture: *Provided*, Said furniture shall not exceed in cost the sum of one hundred dollars.

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31. Appellants to give bond, to prosecute appeal. Ib.
32. Grounds of appeal to be filed. Ib.
33. Certified copies of record to be filed. Ib.
34. Appeal to operate as stay of proceedings. Ib
35. Appellants neglecting to enter appeal, judgment to be affirmed. Ib., 529.
36. Final decision to be certified back to Probate Court. Ib.
37. Probate Judge, not to interfere in an appeal from his decision.—When may practice law.
38. Proceedings in Probate Court to be begun by petition. Ib.
39. Supreme Court to establish rules for Probate Courts. Ib.
40. Who shall provide books, &c. Ib.

SEC. 41. The Judge may keep order in Court, and punish any contempt of his authority in like manner as such contempt might be punished in the Circuit or Supreme Court.

SEC. 42. When costs are awarded, to be paid by one party to the other, in the Courts of Probate, said Courts may issue execution therefor, in like manner as is practiced in the Courts of common law; and when no form for a warrant or process is prescribed by statute or rules of Court, he shall frame one in conformity to the rules of law, and the usual course of proceedings in this State. Any Sheriff or Constable in the State shall execute the order or processes of said Court, in the same manner as the order or processes of the Circuit or Supreme Courts.

SEC. 43. The Judge of Probate may commit to the Lunatic Asylum any idiot, lunatic, or person *non compos mentis*, who, in his opinion, is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that he or she should be at large; and also in all such other cases provided by law. In all cases the Judge shall certify in what place the said person or persons resided at the time of the commitment, and such certificate shall be conclusive evidence of such residence.

SEC. 44. All laws and parts of laws of the late Provisional Government of South Carolina, relative to the powers, duties and course of procedure of the Courts of Ordinary and Equity, as far as the jurisdiction of said Courts is herein conferred on the Courts of Probate, not inconsistent with the Constitution and this Act, or supplied by it, are hereby adopted and declared to be of force, and applicable to the Courts of Probate.

SEC. 45. Wills shall be proved before the Judge of Probate of the County where the testator resided; or, he having no place of residence within the State, in the County where the greater part of his estate may be.

SEC. 46. The probate, before the proper Judge of Probate, of any last will and testament of a *feme covert*, heretofore, or hereafter made in the execution of a power, shall be good, sufficient and effectual in law, in the same manner, and to the extent as if the testatrix was a *feme sole*, and a devise or bequest under such will shall be admitted in evidence in the same manner, and have the same effect in the Courts of law in this State, as if no coverture existed at the time of the making thereof.

SEC. 47. When a paper is offered before the Judge of Probate as the last will and testament of a person deceased, he may admit it to probate in either of the following forms, that is to say:

1. Without citing or calling before him such as have interest, he may examine one of the subscribing witnesses thereto, or, in case of their death, or their removal from the State, by proof of the hand-writing of the testator or testatrix and of the subscribing witnesses, or any other secondary evidence admissible and sufficient, by the rules of the common law; and if such proof shall satisfy the Judge of Probate that the paper is the last will and testament of the deceased, he shall admit it to probate in *common form*.

41. Judges may punish contempts. Ib.
42. How warrants and processes to be executed. Ib.
43. Probate Courts to commit lunatics to Asylum. Ib. 530.
44. Laws of Provisional government, how far adopted. Ib.
45. Where Wills shall be proved. Gen. Stat., 408.—5 Stat, 103.—11. 59.—14. 77.
46. Regarding the will of a *feme covert*. 13, Stat., 473.
47. How wills shall be proved. 11., Stat., 59.

2. Probate in common form shall be good, unless some person or persons interested to invalidate the said paper as a will, shall give notice to the Judge of Probate, within four years next after such probate, (or, if any party interested therein be subject to the disability of infancy, then, within four years next after such disability be removed,) that he, she, or they, do require it to be proved in *due form of law*, which is as follows: The Probate Judge shall require the party producing the will for probate, to prefer a petition in writing, praying to be permitted to swear and examine witnesses upon the same, for the publishing or confirming thereof; and, thereupon, all such persons as would have been entitled to distribution of the estate, if the deceased had died intestate, shall be summoned to answer the petition, in like manner as is provided for the summons of parties to civil actions in the Courts of Common Pleas; whereupon he shall, after swearing all the subscribing witnesses to the same, proceed to examine severally, and to take down in writing such depositions of other witnesses as are made for or against the confirmation of the will, upon all matters touching its legal validity, or formal execution; and in case the proof be sufficient, he shall, by his decree, pronounce for the validity of the will.

SEC. 48. Upon occasion of proving a will in solem form, if it appear to the Judge of Probate that the witnesses to the will, or any of them, are dead, or insane, proof of the hand-writing of the witnesses so dead, or insane, and of the hand-writing of the testator, shall be admitted by the Judge of Probate as *prima facie* evidence that the testator did execute the will in question, in the presence of the witnesses thereto.

SEC. 49. In all trials upon appeals from the Probate Court, in which the question of will or no will is in issue, the executor or parties propounding the will shall be admitted to open the case, and to reply in evidence and argument.

SEC. 50. If any person having in possession the will of a deceased person shall neglect to produce the same to be proved, the Judge of Probate, in whose office such will ought to be proved, shall have power to issue against him process, as for a contempt, and to imprison him until the will be delivered up; and, upon his continued refusal, he shall be liable to indictment, and, upon conviction, shall be punished as for a high misdemeanor.

SEC. 51. That in all actions, exemplifications of wills under the hand of the Judge of Probate and seal of the Court in which such will may have been admitted to probate, or under the hand and seal of any other officer who has legal possession of the same, shall be admissible in evidence in any of the Courts of this State, whether the same may regard the title to real or personal property: *Provided*, The party offering such exemplification shall give to the opposite party, or his attorney, at least sixty days' notice of such intention previous to the trial: *And provided, further*, That no devise of real estate shall be admitted as evidence in any cause until after probate, either in common form or in due form of law.

SEC. 52. If a will be regularly proved in any foreign Court, an exemplification of such will may be admitted to probate in this State upon the exemplification and certificate of the Judge of the Court of probate; and the exemplification shall also be evidence of the devise of lands in this State, where the title of land comes in question: *Provided*, That if the will be not proved in solemn form, the parties in-

48. Proof of signatures of subscribing witnesses. Gen. Stat., 408.

49. Executor to have affirmative of question of will or no will. 11, Stat., 60.

50. Refusal to deliver a will for probate, now punished. Ib., 62.

51. Copies of wills may be used in evidence. Proviso. 9 Sta., 209—13, 312.

52. Foreign probates, how admitted in this State 4, Stat., 102.

terested against the will shall not be concluded by such probate, but may examine witnesses as to the sanity of the testator, or as to any fraud or imposition practiced upon him in obtaining the will; and the other side may apply for an order to perpetuate testimony in support of the will.

SEC. 53. That whenever a deceased person has left a will in writing without having appointed an executor therein, or having appointed one, such executor shall have departed this life without having qualified thereon, or being alive shall have refused to qualify, it shall be the duty of the Judge of Probate in whose Court such will shall have been proved, to grant letters of administration with the will annexed, to such persons as would have been entitled thereto if the deceased had died intestate; *Provided*, Such persons shall take an interest, present or expectant, under such will, equal in value to the distributive share to which they would have been entitled had the deceased died intestate.

SEC. 54. In case no one of the distributees at law of such deceased shall take an interest, under such will, equal in value to the interest he would have taken if the deceased had died intestate, then the Judge of Probate shall grant such letters of administration with the will annexed to such persons as shall have the greatest interest in sustaining such will, in the order of their interests. And in case no person taking interests under such will apply within three months after the death of the testator, then to the greatest creditor or creditors; and in default of such applying, then to such other persons as may apply therefor.

SEC. 55. Every executor or administrator with the will annexed, at the time of proving the will or the granting of administration, shall take the following oath: "I do solemnly swear that this writing contains the true last will of the within named A. B., deceased, so far as I know or believe; and that I will well and truly execute the same, by first paying the debts and then the legacies contained in the said will, so far as his goods and chattels will thereunto extend, and the law charge me, and that I will make a true and perfect inventory of such goods and chattels: So help me God."

SEC. 56. The administrator with the will annexed shall enter into bond in a penalty double the estimated value of the personal property of the intestate, and shall have two or more good sureties, the aggregate value of whose estates, over and above their indebtedness, shall not be less than the full amount of the penalty of the bond.

The condition of the said bond shall be in the following form, to wit: "The condition of this obligation is such that if the above bound C. D., administrator with the will annexed, of the goods, chattels and credits of E. F., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands or possession or knowledge of the said C. D., or into the hands or possession of any other persons for him, and the same so made do exhibit into the said Court of ——— at such time as he shall be thereunto required by the said Court, and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of his actings and doings therein when lawfully required; and, further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels and credits will extend and the law require, then this obligation to be void, or else to remain in full force."

53. Letter of administration, when granted. 5, Stat., 107,—11, 57,—12, 533.

54. Rule to govern appointment of administrator Ib.

55. Form of oath to be taken by administrator with will annexed. 5, Stat., 109.

56. Administrator with will annexed to make bond; to whom payable. Ib. 109—11, 403.

The said bond shall be made payable to the Judge of Probate of the County and his successors, and may be sued by any person injured by the breach of the condition; and judgment for the penalty shall stand as a security for the amount recovered by the party grieved, and for all others in similar circumstances who may, from time to time, by suggestion on the record, have their damages assessed, until the whole penalty be exhausted.

SEC. 57. When a person appointed executor is infirm, or lives at a great distance from the office of the Judge of Probate, where the will has been proved, the Judge of Probate shall have power to grant a commission to some two or more respectable persons in his neighborhood to administer to him the oaths, and perform the other requisites for granting probate of the will.

SEC. 58. That the probate, in due form of law, by and before the proper Judge of Probate, of any last will and testament, whether the same be of real property exclusively, or of real and personal property mixed, shall be good, sufficient and effectual in law, in the same manner, and to the same extent, as if the said last will and testament were exclusively of personal estate.

SEC. 59. No letters testamentary or probate of any nuncupative will shall pass the seal of any Court till fourteen days, at the least, after the decease of the testator be fully expired.

SEC. 60. That in case any person die intestate, the Judge of Probate of the County where the will of such person, had he left a will, would have been proved, shall grant administration of the goods, chattels, rights and credits of such person deceased, to his or her relations, in the order following, to wit:

1. To the husband or wife of the deceased: *Provided, always,* That if any widow, after having obtained letters of administration, shall marry again, the Judge of Probate shall have power to revoke the administration before granted, or join one or more of the next of kin in the administration with her;

2. If there be no husband or wife of the deceased, or they do not apply, then to the child or children, or their legal representatives;

3. In default of them, then to the father or mother;

4. In default of them, to the brothers and sisters;

5. In default of them, to such of the next of kindred of the deceased, at the discretion of the Judge of Probate, as shall be entitled to a distributive share of the intestate's estate; and,

6. In default of such, to the greatest creditor or creditors, or such other persons as the Court shall appoint.

SEC. 61. No letters of administration shall be granted to any person or persons whomsoever, as principal creditor or creditors to any intestate, but upon special trust and confidence, and for the benefit of all the rest of the creditors.

SEC. 62. All debts of an equal nature shall be discharged by such administrator in average and proportion, as far as the assets of the intestate shall extend, and no preference shall be given among the creditors in equal degree.

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57. When Executor may qualify by commission. 11. Stat., 60.

58. What to constitute probate of a Will. 12. Stat., 701.—13. 312.

59. No proceedings to be had till after fourteen days from death of testator. 11. Stat., 529.

60. Administration of intestate, to whom granted. 5. Stat., 168,—11, 59.

61. Letters granted to one Creditor or benefit of all. 3, Stat., 667.

62. Payment of debts of intestate. Ib.

SEC. 63. Where an executor shall die intestate, or where an administrator shall die, either not having fully administered, it shall be the duty of the Judge of Probate of the County in which letters testamentary or of administration were first granted, to grant letters of administration of the estate so unadministered.

SEC. 64. Every administrator shall, in open Court when letters of administration are granted him, take the following oath or affirmation, as the case may be, to wit: "I do solemnly swear or affirm, that A. B., deceased, died without any will, as far as I know or believe, and that I will well and truly administer all and singular the goods and chattels, rights and credits, of the said deceased, and pay all his just debts, as far as the same will extend, and the law require me, and that I will make a true and perfect inventory of all the said goods and chattels, rights and credits, and return a just account thereof when thereunto required; So help me God."

SEC. 65. Such administrator shall also enter into bond, with two or more good sureties, the aggregate value of whose estates, over and above their indebtedness, shall not be less than the full amount of the penalty of the bond, to be approved by the Court, in a sum equal to double the estimated value of the personal property of the intestate, with the condition following "The condition of the above obligation is such, that if the above bound A. B., administrator of the goods chattels and credits of C. D., deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B., or into the hands or possession of any other person or persons for him, and the same so made do exhibit into the said Court of————————, when he shall be thereto required, and such goods, chattels, and credits do well and truly administer according to law, and do make a just and true account of his actings and doings therein when required by the said Court, and all the rest of the said goods, chattels and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the said Court, shall deliver and pay unto such persons respectively as are entitled to the same by law; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same be proved in Court, and the executors obtain a certificate of the probate thereof, and the said A. B. do, in such case, if required, render and deliver up the said letters of administration, then this obligation to be void, otherwise to remain in full force."

SEC. 66. The said bond shall be made payable to the Judge of Probate and his successors, and recorded in his office, in a book to be kept for that purpose, and may be sued in like manner as is prescribed in Section 6, Chapter LXXXVII, of this Act, in the case of bonds given by administrators with the will annexed; and if the Judge of Probate shall fail to take bond and security, as aforesaid such Judge of Probate shall be liable to be sued for all damages arising from such neglect by any person or persons interested in the estate.

SEC. 67. It shall be the duty of the Judge of Probate in whose office an administration bond is lodged upon a petition filed by any of the sureties to the same, who conceive themselves in danger of being injured by such suretyship, to sum-

63. On death of administrator, letters *de bonis non* to be granted. 5. Stat., 108,—11, 58.
64. Administrator to take oath in Court. Ib., 110.
65. Amount and form of Administrators' bond, and how fixed. 2. Stat., 593.—5. 10—12 493.
66. Bond payable to Judge of Probate; how paid, and penalty if Judge does not take. 5, Stat., 112.
67. Sureties to bond may petition for relief. Ib. 111—11 62.

mon the administrator before him, and make such order or decree, for the relief of the petitioner, as may not impair or affect the rights of the parties interested in the estate.

SEC. 68. The Judge of Probate shall grant administration in the following manner: After requiring the person or persons applying therefor to file a petition in writing, he shall issue a citation to the kindred or creditors of the intestate or person deceased, to show cause, if any they have, why administration shall not be granted to the person or persons applying therefor, and he shall cause the same to be published on the Court house door of the County in which his office is, for two successive weeks, and also by having it printed, once a week for two successive weeks after it has been issued in some public gazette, if any be printed in the County.

SEC. 69. If a person applying for letters of administration on the estate and effects of any person deceased make it appear, upon oath, that such deceased person had made a will, which cannot be proved by such person or persons so applying, and that such person or persons applying for such administration verily believes or believe the said will to be lost or destroyed, together with the causes and reasons for such belief, it shall be the duty of the Judge of Probate to whom such application is made, to grant letters of administration to the person or persons so applying for the same, during such time as the said last will and testament shall be lost, and until the same shall be found and duly proved: *Provided*, That all such oaths as are required in this Section shall be in writing, subscribed by the party to be sworn, administered by the Judge of Probate, and filed and recorded by him.

SEC. 70. The executors or administators of any executor or administrator of right, who may waste or convert to his own use the goods or estate of his testator or intestate, shall be liable and chargeable in the same manner as their testator or intestate would have been if he had been living.

SEC. 71. The Judge of Probate of the County in which a deceased person may have died, shall have power (either of his own accord, or at the instance of any creditor or other person interested in the estate of the deceased,) to cite before him such person or persons, as neither being appointed executor nor having obtained administration of the effects of such deceased person, shall, nevertheless, possess himself or themselves of the goods and chattels, rights and credits of such deceased; and, upon such person or persons being cited as aforesaid, the Judge of Probate shall require of him or them a discovery and account of all and singular the goods and chattels, rights and credits of the deceased, and shall proceed to decree against him or them for the value of the estate and effects of the deceased, which he or they may have wasted, or which may have been lost by his or their illegal interference, charging them as executors of their own wrong, are made liable at common law, as far as assets shall have come into their hands.

SEC. 72. That where a will is proved, or application is made for administration of the estate of a person dying intestate, the Judge of Probate of the County shall require the executors or administrators to make out an exact inventory of the personal estate of the deceased, and shall appoint three or more respectable freeholders to appraise the same on oath; which inventory and appraisement shall be returned into his office, within such time as he shall limit.

68. Kindred and creditors to be cited. Citation how published. 11, Stat., 58.
69. Proceedings on destruction or loss of Will. Ib. 58.—4, Stat., 429.
70. Executors of executor liable for conversion of property. 2, Stat., 552.
71. Executors in certain cases deemed trespassers. Ib. 529.—5, 112. —11, 63.
72. Inventory and appraisement to be made on probate of Will. 3, Stat, 666,—5, 108,—11, 61.

SEC. 73. If the goods be in several Counties, the Judge of Probate of such Counties, repectively, shall order appraisement, and appoint appraisers in each, which appraisement, when made, shall be returned by the appraisers into the office of the Judge of Probate, where the will is recorded, or by whom administration is granted.

SEC. 74. Every appraisement made, as aforesaid, may be given in evidence in any legal proceeding against such executors and administrators, to prove the value of the estate, but shall not be conclusive, if it shall appear, upon a trial of the cause, that the estate was really worth, or *bona fide* sold for, more or less than such appraisement.

SEC. 75. Upon the settlement of their accounts by executors and administrators, it shall be the duty of the Judge of Probate to allow them the sum of one dollar per day, for the expense of every appraiser during the time that he is proved to have been employed in appraising the estate of the testator or intestate.

SEC. 76. No appraisers, appointed to appraise any testator's or intestate's goods and chattels, shall enter upon that office before they shall have taken the following oath, before a Trial Justice, who is hereby impowered to administer the same: "You A B, C D, E F, &c., do swear that you will make a just and true appraisement of all and singular the goods and chattels, (ready money only excepted,) of G. H., deceased, as shall be produced by I. K., the executor or administrator of the estate of the said G. H., deceased, and that you will return the same, certified under your hands, unto the Judge of Probate of————County, within the time prescribed by law."

SEC. 77. All administrators and executors may, by and with the consent of the Probate Judge, compromise all demands coming into their hands as such, where the same are appraised doubtful or worthless; and, where such compromises are made, the same shall be fully shown in their annual returns.

SEC. 78. The Judges of Probate of the several Counties in this State shall have power, if the personal estate of any intestate, testator or testatrix, in the hands of the administrators or executors, or, if the assets set apart by a last will and testament be insufficient to pay the debts of the deceased, to pay over to the administrators or executors of such estate the whole or so much of the proceeds of the sale of the real estate of the deceased, sold by them, the said Judges, as will pay the outstanding debts of the deceased; and the administrators or executors receiving the same shall be chargeable therewith, as with other assets which have come into their possession in the regular course of administration.

SEC. 79. Before paying over to any executors or administrators any money arising from the sale of real estate, as provided and directed in the preceeding Section, Judges of Probate shall require the said administrators or executors to enter into bond, with good and sufficient surety, payable to the Probate Judge, and in a penal sum equal to double the amount to be paid over, the condition of which bond shall be the just and faithful administration of the fund according to law.

SEC. 80. On application by a creditor or creditors of the deceased, by petition in writing, stating the indebtedness of the deceased, the deficiency of assets, and

73. Goods in various Counties to be appraised therein. Ib. 666.
74. Appraisement to be evidence of value, Ib. 667.
75. Pay allowed to appraisers. 11. Stat., 61.
76. No person to act until sworn; Form of oath. 3, Stat., 667.
77. Administrator may compromise demands, by consent of Probate Judge. 14. Stat., 313.
78. Judges may order real estate sold if personal be insufficient to pay debts. 11, Stat., 332.
79. Court to require special bond before paying over proceeds sale. Ib. 233.

praying that the proceeds of the sale of real estate of the deceased may be paid over to the executor or administrator, (as the case may be,) and applied to the satisfaction of the debts of the deceased, the Probate Judge shall pay over to the executor or administrator, taking bond and surety, as provided by this Chapter, such proceeds, or so much thereof as shall be necessary; *provided*, The heir at law, or devisees, shall have notice thereof and be required to show cause, if any they can, to the contrary.

SEC. 81. The Probate Judge shall, on such application, forthwith cite the executor or administrator to appear and account for the assets of the deceased, if such accounting has not been previously had.

SEC. 82. He shall also summon the heirs at law, or devisees, of the deceased, as the case may be. The form of the summons shall be as follows:
"To A. B. and C. D., heirs at law of E. F., (or devisees of E. F.:)

"You are hereby required to appear at the Court of Probate, to be holden at ——————Court House, for——————County, on the——————day of——————, Anno Domini——————, to show cause, if any you can, why the proceeds of the sale of the real estate of E. F., deceased, sold by me for partition and division, should not be paid over to G. H., executor, (or administrator,) of the said E. F., to be applied by him to the payment of the debts of the said E. F.

"Given under my hand and seal, this——————day of——————,
A. D.——————

(Signed) "J. K., [L. S.]
"Probate Judge of——————County."

SEC. 83. A copy of the said summons shall be served on the parties interested, in like manner as summonses are served in civil actions, in the Circuit Courts; and if there be minors, the Probate Judge shall appoint guardians *ad litem*, who shall be served with a copy of such summons, and the appointment and acceptance of such guardianship shall be endorsed on the petition: *Provided*, That nothing herein contained shall preclude any of the parties from accepting the service of such summons, or from consenting to the application of the funds as prayed for in such petition.

SEC. 84. If any of the parties reside beyond the limits of this State, or whose residence is unknown, and do not consent, in writing, that the funds be so applied, the Probate Judge shall advertise for his, or her or their appearance, by publication of the summons as provided for by Section 158 of the Code of Procedure; and if such party shall not appear and show sufficient cause, within the time named in the said summons, then the Judge of Probate shall enter of record his, her or their consent as confessed, and shall take an account of the executor or administrator relative to the assets of the estate of the deceased, and if he shall be satisfied that they are sufficient to pay the debts thereof, of which he shall make an exhibit in the said account, he shall pay over to the executor or administrator the whole or so much of the proceeds of the sale of the real estate is his hands, as may be necessary to pay the debts of the said deceased.

80. Court may order such moneys paid to creditors, on petition: Proviso. Id.
81. Administrator shall account for assets. Ib.
82. Heirs or devisees to be summoned. Ib.
83. Manner of service of summons. Code, 549, 551.
84. Non residents to be cited by publication. Ib.

SEC. 85. The Probate Judge shall file and keep in his office the petition and all the papers connected therewith, and shall enter in his cash book the amount abstracted from the sale of the real estate and paid over to the executor or administrator, after deducting all costs; and the balance remaining in his hands, if any, shall be disposed of as provided by law.

SEC. 86. The Probate Judge shall receive for his services required by Sections 79 to 85, inclusive, of this Chapter, the sum of five dollars, and no more, out of the proceeds of the sale of the real estate of the deceased, unless the application be refused or rejected by the Probate Judge, in which case the same shall be paid by the petitioner or petitioners, and the Probate Judge is empowered to enforce execution against him or them for the same.

SEC. 87. Executors or administrators shall annually, while any estate shall remain in their care or custody, at the first Court held after the first day of January, render to the Judge of Probate of the County, from whom they obtained probate of will, or letters of administration, a just and true account, upon oath, of the receipts and expenditures of such estate the preceding year, which, when examined and approved, shall be deposited with the inventory and appraisement, or other papers belonging to such estate, in the office of the said Judge of Probate, there to be kept for the inspection of such persons as may be interested in the said estate.

SEC. 88. When an administrator or executor, appointed by the Judge of Probate, shall neglect to make his annual return for six months after the month of January, in which it should have been made, it shall be the duty of the Judge of Probate forthwith to cite him or her so to do, and upon his or her neglect or refusal to render such account, on or before the next annual period of accounting, such defaulter shall be adjudged in contempt, and the Judge of Probate is empowered and required to issue his attachment against such defaulter, and imprison him or her, until he or she shall purge such contempt by rendering such account. And in case of such recusant administrator, he may revoke the letters of administration.

SEC. 89. The commissions given by this Chapter shall be divided amongst executors and administrators in proportion to the services by them, respectively, performed, to be rated and settled by the Judge of Probate who granted probate of the will or letters of administration, if the executors or administrators cannot agree amongst themselves concerning the same.

SEC. 90. It shall be the duty of every trustee or guardian appointed by the Court, to make an annual return of the estate in his possession, setting out all the items of money received and paid out, with the proper vouchers; and it shall be the duty of the Judge of Probate to set apart certain days for the examination of such accounts, and to give notice thereof to all guardians and trustees whose duty it shall be to account before him.

SEC. 91. That if any executor or executrix shall purchase any property at the sales of the estate of his or her testator, he or she shall give bond, with surety, to the Judge of Probate of the County, conditioned to account for the purchase money of the said property.

85. Full record to be kept by Probate Judge. Ib.
86. Probate fees for services under this Chapter. Gen. Statutes, 421.
87. Executors and administrators shall render account on oath to Probate Court. 3, Stat. 666.
88. Default in making annual returns; Penalty. 11, Stat., 68.
89. Commissions to be allotted by Judge of Probate. 5, Stat., 112.
90. Trustees and Guardians to make annual returns. 7 Stat., 317.
91. Executor purchasing at sale of testators property to give bond 11 Stat., 89.

SEC. 92. On all sales of personal property, made by executors and administrators, they shall first obtain an order from the Court of Probate; and no sale made without such order shall be valid, except it be directed by the will.

SEC. 93. It shall be the duty of the Judge of Probate by whom administration may be granted, upon application made to him, to grant an order for the sale of the whole or any part of the personal estate of the deceased intestate, if, in his opinion, the same is advisable, regulating the time, place and credit to be given, in such manner as to do impartial justice to all persons interested therein.

SEC. 94. The Judge of Probate in whose office a will is recorded shall have the same power as to the personal estate of a testator, not inconsistent with the provisions of the will, as is given him over the personal estate of an intestate by the preceding Section.

SEC. 95. All administrators, executors, and other fiduciaries, shall be allowed to sell to the highest bidder, as other personal property is sold, all notes, accounts and other evidences of indebtedness coming into their hands as such, when the same are appraised doubtful or worthless.

They may, by and with the consent of the Probate Judge, compromise all demands coming into their hands as such, where the same are appraised doubtful or worthless; and, where such compromises are made, the same shall be fully shown in their annual returns.

SEC. 96. The Judge of Probate, on appointing a guardian to an estate, shall require him to enter into bond to himself and his successors, in a penalty of double the amount of the estate, and shall have the same power, as to relieving the sureties of a guardian, which is given to him in the case of relieving the sureties of an administrator.

SEC. 97. All guardians of estates, appointed by the Judge of Probate, shall render to him an annual account of their actings and doings, as executors or administrators are required by law to do, and upon making default, shall forfeit their commissions.

SEC. 98. Any Judge of Probate shall have power to pronounce a decree against any guardian by him appointed, upon final account, which shall authorize such proceedings against the sureties of such guardian, as may be taken in like cases against the sureties of an administrator.

SEC. 99. In case of removal from the State, or the death of any guardian not represented by executor or administrator, the Judge of Probate shall take the same measures for an account and decree against him, which shall have the like force and effect against his sureties and estate, as is provided by law respecting an administrator.

SEC. 100. The guardian or guardians of children under age, shall be required and directed to apply to the Probate Court for an order of partition, in all cases

92. Order must be obtained before property be sold. 5 Stat., 109.—6 238.
93. Judge of Probate to grant order. 11 Stat., 62.
94. Power of Probate Judge over personal estate of testator. Ib.
95. Administrator to sell personal property: to compromise demands. 14. Stat., 313.
96. Guardian on appointment to give bond: how sureties may be relieved. 11 Stat., 68.
97. Guardians to render accounts to Probate Judge: Penalty for default. Ib.—3 667.—7 327.
98. Proceedings against sureties. 11 Stat., 67.
99. Provisions in case of death, or removal of Guardian. Ib., 68.
100. Guardian to apply to Court for order of partition in certain cases. 3 Stat., 703.

where any lands shall be given or descend to such children, in coparcenary, joint tenancy or tenancy in common, (and no provision made by will or otherwise how such lands shall be divided,) in case such children shall neglect so to do by the space of twelve months after becoming of age.

SEC. 101. It shall be the duty of the Judge of Probate, on application by the executor or administrator of any deceased person, to whom letters testamentary or of administration have been respectively granted, to furnish a true copy of such orders as he may make, concerning the probate of the will, or granting of administration, certified under his hand, which shall be sufficient evidence of the appointment of such executor or administrator in any Court in this State.

SEC. 102. No devise of real estate shall be admitted as evidence in any cause until after probate before the Judge of Probate, either in common form, or in due form of law.

SEC. 103. It shall and may be lawful for any woman who is entitled to dower or thirds in the lands of which her deceased husband was seized in fee at any time during their marriage, to apply to the Judge of Probate of the County in which said lands are situated, for a writ of admeasurement thereof, to be directed to certain persons who shall be appointed for that purpose.

Immediately thereupon, the Judge of the Probate Court shall cause a summons to be issued and directed to the heir-at-law of the deceased, (if of full age,) or to his guardian, (if he or she shall be an infant,) and if there be no guardian, then to the executor or administrator of the deceased, or to any other person or persons who may be in the possession of any of the said lands, commanding him, her or them to appear at the Probate Court to be held in the County where the lands are situated, that shall be held ten days after the service of the summons above mentioned, and show cause why the prayer of the petition should not be granted.

SEC. 104. On the return of the summons, if the heir-at-law, or his or her guardian, (if he or she be an infant,) or any other person or persons who may be in possession of the said lands, shall appear, and shall not show sufficient cause against the petition, then the said Court shall cause a writ for admeasurement of dower to be issued and directed to five persons, two of whom shall be nominated by each of the said parties, and a fifth by the Court, commanding them or majority of them, within one month thereafter, (being first duly sworn for that purpose,) fairly, justly and impartially, according to the best of their judgment, to admeasure and mete out to the said petitioner, and to put her in full and peaceable possession of one-third part of all the lands of her deceased husband; and when they have so done, they, or a majority of them, shall immediately return a general plat of the said lands, with a certificate thereon in writing, under their hands and seals, describing the manner in which they have made the admeasurement aforesaid, into the office of the said Court, there to be recorded, and the same shall be final and conclusive on all parties concerned therein.

SEC. 105. If the person who shall be served with the said summons shall appear on the day named therein, and, not showing sufficient cause against the petition, shall refuse to nominate two persons in the manner and for purposes above directed, then the Court shall appoint them in behalf of such heir,) or other person in

101. Papers furnished by Probate Court to executors, may be given in evidence. 5 Stat., 109.

102. Devise of real estate. 12 Stat., 701.—11. 62.

103. Application for admeasurement of dower; party in possession to be cited. 4 Stat., 742—7, Stat., 294.—14, 77.—Con. Art. 4, 20.

104. 105. Proceedings under writ for admeasurement of dower. Ib. Ib.

possession of the said land, and they, together with those nominated by the petitioner, shall make such allotment and admeasurement as before required; and the said Commissioners, so appointed, or a majority of them, having made due return thereof, the same shall be as effectual and binding on all parties as if done in the manner first above prescribed.

SEC. 106. The Judge of Probate may exercise jurisdiction of all petitions for partition of real estate where no dispute exists in relation to the title thereof; and when the title to such real estate is disputed, he shall refer the same to the Circuit Court, for adjudication, unless the parties shall consent to his determination of the same.

SEC. 107. Upon the petition of any person or persons interested in any real estate, as aforesaid, the Judge of Probate shall proceed to issue his summons in the following words, (varying the same according to the circumstances of each case, respectively,) that is to say:

"THE STATE OF SOUTH CAROLINA:"

"To A. B., C. D., and E. F., legal heirs and representatives of G. H., who died intestate, (or devisees of G. H., in case he died leaving a will, which did not direct how a division was to be made,) Greeting:

"You are hereby required to appear at the Court of Probate, to be holden at ———Court House, for———County, on the——day of ———, A. D. ——, to show cause, if any you can, why the real estate of G. H., deceased, described in the petition of ———, filed in my office, should not be divided or sold, allotting to the said A. B. one-third thereof, and the remaining two-thirds in equal portions to the said C. D. and E. F.

GIVEN under my hand and seal, this———day of ———, A. D. 18—.

J———K———, [L. S.]
Judge of Probate, ———County.

Such summons shall be served upon those interested, and they shall be made parties, in like manner as in cases in the Court of Common Pleas; and the said summons may be duly served and proved by any disinterested person, or by any Sheriff or his deputy; or the service of the same may be consented to by a written acceptance of the parties interested, endorsed by the said parties on the original summons.

SEC 108. In case there are minors interested, the Judge of Probate shall have full power and authority to appoint a guardian or guardians, *ad litem*, in such case, as well as guardian or guardians for the estates of said minors so interested, as aforesaid, so far as relates to the interest of the said minors in the land to be divided, and take the usual bond or bonds in case of guardianship, wherever the case may require it; and shall take the written consent of such guardian or guardians, endorsed on the original summons, in behalf of his, her or their ward or wards.

SEC. 109. If a party or parties, residing without the State, shall not appear and show sufficient cause against the sale or division within the time required by law, then the said Judge of Probate shall proceed to enter of record, his, her or their consent, as confessed.

106. Jurisdiction of Probate Judge in partition of estates. 11 Stat., 64.—Code 536.
107. On application for sale or division, heirs to be cited; Form of summons. 3 Stat., 708—5 163 6 Stat,. 248—11 64.
108. Relating to the appointment of *guardian ad litem*. 6 Stat., 248.—11 65.—Code 527, 551.
109. Party not appearing to object to sale, considered as consenting. 11 Stat., 55.

SEC. 110. If upon the return of the original summons so issued as aforesaid, served, accepted, or consented to, there shall, in the opinion of the Judge of Probate, be no good cause shown why a division or sale of the said premises should not take place, he shall proceed to determine, upon the examination, on oath, of credible witnesses acquainted with the premises, whether it will be more for the advantage of the parties in interest, that the said premises shall be sold or divided.

SEC. 111. If he should decide in favor of a sale, he shall enter of record an order for sale, in the following words, (varying the form according to the circumstances of the case,) viz:

A. B., Petitioner,
vs.
C. D., and E. F., Defendants. } Order in Partition.

On due examination it is ordered and decreed, that the lands described in the Petition in Partition, in this case, be sold by the Sheriff of———County, on the first Monday in ———next, or on such other sale day as will be more advantageous for the parties in interest, on a credit of ————, the purchaser giving bond, with good security, and a mortgage of the premises, if deemed necessary, to the Judge of Probate, for the payment of the purchase money.

J. K., [L. S.]
Judge of Probate———County.

SEC. 112. In case the Judge of Probate shall determine in favor of the division of the said estate, he is hereby authorized and required to issue, under his hand and seal, his writ, directed to three or more discreet persons, a majority of whom shall have power to act, requiring them under oath, to be administered to each other, to go on the premises, assisted by a surveyor, if necessary, and make a division among the parties interested, according to their respective rights, and the said Commissioners shall make their return to the said Judge of Probate, with the necessary plat, or plats, marks and designations.

SEC. 113. Such writ shall be substantially in the following words:

"THE STATE OF SOUTH CAROLINA,
County

To L. M., N. O., and P. Q., or any two of them;

You are hereby required, with a surveyor if necessary, to go upon the land described in a petition, wherein A. B. is petitioner and C. D. and E. F. are defendants, and to divide the same between the said parties in interest, according to their interests respectively; that is to say, allowing to the said A. B. one-third, thereof, and the remaining two thirds between C. D. and E. F., (varying the writ, of course, according to the facts of each case,) and that you make your return to me on oath.

Given under my hand and seal, the day of
A. D, 16 .

J. K. [L. S.]
Judge of Probate————County."

110. Judge to determine whether property be sold or divided. ib.
111. Order, if for sale, to be recorded: Form of order. 6 Stat. 249.—11 66.—14 374.
112. Commissioners to make division, and return, with plats. Ib. ib.
113. Form of writ to be issued to Commissioners. Ib.

SEC. 114. The return of the said Commissioners, or a majority of them, shall be in the words following, (to be varied as the case requires:)

"SOUTH CAROLINA, }
COUNTY. }

We, L. M., N. O., and P. Q., Commissioners named in the writ, to divide between A. B., C. D., and E. F., a tract of land mentioned therein, have been upon the same, (or, are well acquainted with the quality, extent and situation of the same,) and value it at

, and do divide the same among the said parties, allotting to the said A. B., (such a part, describing it,) and to C. D., and E. F., (certain other parts, describing each part distinctly,) as will more clearly appear by plat thereof, hereunto annexed, dated the day of 18

Given under our hands and seals, this day of 18

L. M. [L. S.]
N. O. [L. S.]
P. Q. [L. S.]

SEC. 115. If the Judge of Probate shall approve of the said return, he shall endorse upon the same, the words, "Examined, approved, and confirmed, by me, this day of 18

J. K., Judge of Probate,
————County."

SEC. 116. Whereas doubts have arisen whether the Judges of the Probate Court in this State are authorized to issue executions to carry into effect any order, sentence or decree of such Court; therefore, "*Be it enacted*," That, from and after the passage of this Act, the Judges of the Probate Court, in the several Counties in this State, may, and they are hereby, fully authorized and empowered to issue executions, when that is the necessary and proper process to carry into effect any order, sentence or decree of such Court.

SEC. 117. If the Judge of Probate shall charge any other fees than those allowed by law, he shall forfeit the party injured ten times the amount of excess of fees so improperly charged; to be recovered by action in the Court of Common Pleas.

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114. Form of return to Judge, by Commissioners. Ib. Ib.
115. Approval of Judge endorsed. Ib.
116. Judges of Probate may issue executions. 15 Stat. 23.
117. Fees of Judges to be those allowed by law. Gen. Stat. 178.

CHAPTER X.

OF THE

OFFICE AND JURISDICTION OF TRIAL JUSTICES,

AND OF THE DUTIES OF CONSTABLES.

APPOINTMENT, QUALIFICATION AND REMOVAL.

SECTION 1. The Governor, by and with the advice and consent of the Senate, shall, from time to time, appoint and commission, in the several counties of the State, a suitable number of Trial Justices.

SEC. 2. Such Trial Justices shall be distributed as the convenience of the several Counties requires, and the number in commission shall not exceed: In Abbeville, nine; Anderson, sixteen; Barnwell, ten; Beaufort, ten; Charleston, twenty-four; Chester, eight; Clarendon, six; Colleton, ten; Chesterfield, four; Darlington, eight; Edgefield, eight; Fairfield, eight; Georgetown, five; Greenville, eight; Horry, six; Kershaw, six; Lancaster, four; Laurens, five; Lexington, seven; Marion, six; Marlboro, six; Newberry, seven, Oconee, five; Orangeburg, seven; Pickens, five; Richland, eight; Spartanburg, twelve; Sumter, eight; Union, eight; Williamsburg, eight; York, eight.

SEC. 3. Trial Justices shall be commissioned and hold their offices for the term of two years, unless sooner removed by the Governor. If a Trial Justice changes his domicil, and removes therefrom the distance of three miles, his authority and jurisdiction as such Justice shall thereupon cease, and another Trial Justice may be designated and appointed in his place.

SEC. 4. The Governor is authorized to suspend from his office, for such causes as to him shall seem just, any Trial Justice, and to designate another person to perform the duties of such suspended officer, (who, in turn, may be removed and another designated,) and he shall report such suspension to the Senate, together with the name of the person designated by him to perform the duties of such suspended officer; and if the Senate confirms the person so designated, the officer suspended shall be regarded as removed, and the vacancy duly filled; but if the Senate refuses to confirm him, the suspended officer shall be restored to his office.

1. How Trial Justice to be appointed. 14 Stat., 376.
2. Number of Trial Justices allotted to the several Counties, respectively. Id, 377.
3. Term of office; Change of residence. Id.
4. Governor may suspend for cause, and shall report suspension to Senate. Id.

SEC. 5. During the vacation of the Senate, the Governor is authorized to appoint Trial Justices, subject to the approval of the Senate, to act, unless sooner removed by him, till the end of the next session. If not approved by the Senate, said appointment shall cease at the end of the said session.

SEC. 6. On receiving such commission, and before entering upon the duties of their offices, such Trial Justices shall take and subscribe, before the Clerk of the Court of their respective Counties, the oath required by Section 30, Article II, of the Constitution, and file the same in his office, unless in Counties where such Clerks may not be qualified according to law; and, in such case, the said oath shall be administered, and be filed in the office of the Secretary of State. And such Trial Justice may immediately enter upon the discharge of his duties.

SEC. 7. That it shall not be lawful for any person exercising the office of a Trial Justice within this State to keep any tavern, or to retail spiritous liquors, nor shall any license for retailing spirituous liquors be granted to any person exercising the office of a Trial Justice, nor to any person or persons in his house or family, or for his emolument; and if any person or persons shall offend against the true intent and meaning of this Section, he shall forfeit and pay the sum of two hundred and fifty dollars to any person or persons who will inform or sue for the same, and be forever thereafter rendered incapable of serving in the office of a Trial Justice of this State.

SEC. 8. Trial Justices shall have and exercise, within their respective Counties, all the powers, authority and jurisdiction, in criminal cases, hereinafter set forth.

SEC. 9. Trial Justices shall have jurisdiction of all offenses which may be subject to the penalties of either fine or forfeiture not exceeding one hundred dollars, or imprisonment in the Jail or Work House not exceeding thirty days; and may impose any sentence within those limits, singly or in the alternative.

SEC. 10. They may punish by fine, not exceeding one hundred dollars, or imprisonment in Jail or House of Correction not exceeding thirty days, all assaults and batteries, and other breaches of the peace, when the offence is not of a high and aggravated nature, requiring, in their judgement, greater punishment.

SEC. 11. They may cause to be arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively, the terror of the people, and such as utter menaces or threatening speeches, or otherwise dangerous and disorderly persons. Persons arrested for any of said offences shall be examined by the Trial Justice before whom they are brought, and may be tried before him, and, if found guilty, may be required to find sureties of the peace, and be punished within the limits prescribed in Section 9, or, when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions.

SEC. 12. They shall have jurisdiction of larcenies by stealing of the property of another, of money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order or certificate, or any book of accounts for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen does not exceed twenty dollars in value.

5. Governor may appoint in vacation, subject to approval of Senate. Ib.
6. Oaths of office, by whom administered. Ib. 190
7. Trial Justice prohibited from keeping tavern. 7 Stat., 269.
8. Their jurisdiction in criminal cases. 14 Stat., 402.
9. Limit of penalty Trial Justice may impose. Ib.
10. Fines for assaults and breaches of the peace. Ib.
11. They may arrest rioters, and hold to bail or commit. Ib
12. To have jurisdiction of petit larcenies. Ib, 403

SEC. 13. They shall have jurisdiction of the offences of buying, receiving, or aiding in the concealment of stolen goods and other property, where they would have jurisdiction of the larceny of the same goods or property.

SEC. 14. They shall have jurisdiction of the offences of obtaining property by any false pretence, or by any privy or false token, or by any game, device, sleight of hand, pretensions to fortune telling, trick or other means by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property, and may punish said offences the same as larceny.

SEC. 15. They shall cause to be arrested all persons, found within their Counties, charged with any offence, and persons who, after committing any offence within the County, escape out of the same; examine into treasons, felonies, grand larcenies, high crimes and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offences not within their jurisdiction, and punish those guilty of such offences within their jurisdiction.

SEC. 16. All proceedings before Trial Justices, in criminal cases, shall be commenced on information, under oath, plainly and substantially setting forth the offence charged, upon which, and only which, shall a warrant of arrest issue; and the information may be amended at any time before trial.

All proceedings before Trial Justices shall be summary, or with only such delay as a fair and just examination of the case requires.

SEC. 17. Every person arrested and brought before a Trial Justice charged with an offence within his jurisdiction shall be entitled, on demand, to a trial by jury.

SEC. 18. Trial Justices residing within the limits of the City of Charleston are vested with jurisdiction to try, determine and impose the penalties authorized by Ordinance of the City Council of Charleston.

SEC. 19. Whenever a Trial Justice shall have issued a warrant for the arrest of any person charged with an offence above the grade of a misdemeanor, such Trial Justice shall be authorized to select any citizen or citizens of the County to execute the same, upon his endorsement upon the said warrant that, in his judgment, the selection of such person or persons will be conducive to the certain and speedy execution of the said warrant; and the person or persons so selected shall have all the powers now, or hereafter, conferred by law upon any Constable within this State; and any person or persons selected in the manner provided for in this Section, shall be required forthwith to proceed to execute the said warrant, and upon his wilfully, negligently or carelessly failing to make the arrest, or permitting the party to escape after arrest, he or they shall be punished, upon conviction, on indictment, by fine and imprisonment in the County jail, in the discretion of the Judge before whom the indictment may be tried; said imprisonment not to be less than six months.

SEC. 20. It shall not be necessary for any Trial Justice, when any prisoner is produced for commitment or bail, on charge of a felony, to examine such prisoner, and those that bring him; such Justice may take the examination of any witness in behalf of the State, in the presence of the prisoner, allowing such prisoner the

13. To punish for receiving and concealing stolen goods. Ib.
14. Obtaining goods on false pretences punishable as larceny. Ib.
15. To arrest escaping offenders: To examine and bind over for high crimes, &c. Ib.
16. How proceedings begun before Trial Justice; To be summary. Ib.
17. Offenders entitled to trial by jury. Ib.
18. Justices in Charleston to try cases under city ordinances. 14 Stat., 333.
19. May select any citizen to execute warrant of arrest. Ib. 666.
20. Proceedings in Trial Justice Court in felony. 11 Stat., 23

right of cross-examination, and reduce the testimony so taken to writing, read the same over to the witness, and require him to subscribe; and the Trial Justice shall return testimony thus taken to the office of the Clerk of the Court of General Sessions.

SEC. 21. Upon information made of the materiality of any witness within the State, to support any accusation made, or where the materiality of such witness shall be within the knowledge of any Trial Justice, he shall issue his warrant, requiring such witness to appear before him or the next Trial Justice, to enter into recognizance, with good security, if deemed proper, which warrant shall authorize the arrest and detention of any such witness, in any County in the State; and on being brought before such Trial Justice, and refusing to enter into recognizance, such witness may be committed by the said Trial Justice; and the accused shall, in felonies, and no other case, have the like process to compel the attendance of any witness in his behalf, as is granted or permitted on the part of the State: *Provided*, That no Trial Justice shall receive any fees for issuing more than one warrant for witnesses, on the part of the State, or upon the part of the accused, in the same case, unless, on the second or other application, oath shall be made that the prosecutor or accused was not aware, at the issuing of the previous warrant, of the materiality of such witness.

SEC. 22. Any Trial Justice shall be authorized and required to command all persons who, in his view, may be engaged in violations, or disorderly conduct, to the disturbance of the peace, to desist therefrom, and to arrest any such person who shall refuse obedience to his command, and to commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the Trial Justice may determine. In like manner, he shall arrest and commit, if necessary, any person who, in his view, shall perpetrate any crime or misdemeanor whatsoever. In making any such arrest, the Trial Justice shall have power to command any Constable, bystander, or the *posse comitatus*, as the emergency may require; and any person who shall refuse to aid in such arrest, when required by the Trial Justice, shall be liable to indictment as for a misdemeanor. Whenever there shall be an indictment for any offence committed in his view, the Trial Justice shall be the prosecutor; and he shall bind in recognizance all necessary witnesses.

SEC. 23. No Trial Justice shall let to bail any person charged with any offence, the punishment of which is death, but if it shall clearly appear, upon an examination, that the charge is not founded in probability, the party may be discharged.

SEC. 24. That whenever any Trial Justice shall receive information in writing, and under oath, that any person or persons are about to leave this State for the purpose of sending or receiving a challenge to fight a duel, or for the purpose of fighting a duel after such challenge shall have been sent or received, it shall be the duty of such Trial Justice forthwith, to issue his warrant for the arrest of such person or persons, to be carried before some Trial Justice, who shall require such persons to enter into recognizance in such sum as to such Trial Justice may seem meet, conditioned that such person or persons shall keep the peace within this State, and shall not leave the State for the purpose of sending or receiving a challenge to fight a duel, or for the purpose of fighting a duel after such challenge has been sent or received.

21. Material witnesses in felony to be bound in recognizance; also witnesses for defendant; Fees only allowed for one warrant. Ib. 22.

22. May command the peace, and arrest all disturbers; and call out *posse comitatus*. Ib. 21.

23. Not to take bail in capital cases. Ib. 22.

24. To arrest parties about to fight a duel, and bind them over. 12 Stat., 606.

CIVIL JURISDICTION.

SEC. 25. On the determination of any lease, in writing or by parol, of any lands and tenements, within this State, when the lessee shall hold over thereafter, any two Trial Justices, in the County where the same may be situated, are authorized and required, on the complaint and due proof thereof by any lessor, his heirs or assigns, to place the names of twenty-four neighboring freeholders in a box, and from them draw the names of eighteen, and shall thereupon issue their warrant, in the nature of a summons, directed to the Sheriff, or any Constable of the County, commanding such officer to summon the said eighteen freeholders to attend at a certain time within four days, and a place appointed, and from the said eighteen freeholders so summoned twelve shall be drawn in the same manner, who shall be empannelled to try the facts: *Provided*, That if from the said eighteen so summoned the number of twelve cannot, from any cause, be had, the Trial Justices are authorized to complete the number from the remainder originally selected. And the said Trial Justices shall also summon the said lessee, or any other person claiming or coming into possession under him, at the same time, and in the same way, likewise to appear before them, to show cause, if any, such lessee or other person may have, why possession of the premises should not be forthwith restored to such lessor, his heirs or assigns; and if, upon hearing the case, the jury shall be satisfied that the complainant is entitled to the possession in question, they shall so find, whereof the Justices shall make a record, and shall thereupon issue their warrant, directed to the Sheriff of the County wherein the lands are situated, commanding him forthwith to deliver to such lessor, his heirs or assigns, full possession of the premises, and to levy all expenses incurred of the goods and chattels of the lessee, or the person in possession as aforesaid.

SEC. 26. That the forms and proceedings before Trial Justices, in cases of forcible entry and detainer, shall be the same as are prescribed by law in cases where tenants hold over, after the expiration of their leases.

SEC. 27. That when any person or persons have gone, or shall hereafter go, into possession of any lands or tenements of another, either as a tenant at will, or under a contract to serve another, either as a domestic servant or common laborer, or otherwise, and shall refuse or neglect to quit the premises so occupied, when required by the person letting the same, or upon the termination of the contract, either by its own limitation or from any other cause, it shall be lawful for the person letting the premises to apply to any Trial Justice, whose duty it shall be to have a notice served upon the person or persons so refusing to quit, to show cause before him, at the expiration of ten days from the personal service of such notice, why he should not be ejected, and if no sufficient cause be then shown, it shall be the duty of the Trial Justice forthwith to issue his warrant, directed to the Sheriff or any Constable, requiring him, without delay, to eject such person or persons from the premises so let, and authorizing him to use such force as may be necessary.

SEC. 28. That if any person shall have gone into, or shall hereafter go into possession of any lands or tenements of another, without his consent, or without warrant of law, it shall be lawful for the owner of the lands so trespassed upon to apply to any Trial Justice to serve a notice on such trespasser to quit the premises,

25. Tenants holding over may be removed; how. 5 Stat., 646—6 67.—11 31.

26. Proceedings in forcible entry and detainer. 6 Stat., 338—2 Hill. 367.

27. Method of proceeding in ejecting tenant. 13 Stat., 416.

28. To eject trespassers by force, after notice; Proviso I Hals.

and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit, it shall then be the duty of such Trial Justice to issue his warrant to any Sheriff or Constable, requiring him forthwith to eject such trespasser, using such force as may be necessary: *Provided, however*, That if the person in possession shall, before the expiration of the said five days, appear before such Trial Justice, and satisfy him that he has a color of claim to the possession of such premises, and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the Trial Justice, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of land may incur in the successful establishment of his claim, by any of the modes of proceeding provided by law, the said Trial Justice shall not issue his warrant as aforesaid.

SEC. 29. The Trial Justice shall be entitled to demand and receive from the person applying for the warrant provided for in the two preceding Sections, a fee of five dollars before issuing the same, and the Sheriff or Constable shall, in like manner, be entitled to demand and receive a fee of five dollars and mileage before executing such warrant, from the person applying for the same.

COURTS OF TRIAL JUSTICES.

SEC. 30. Either party to a suit before a Trial Justice shall be entitled to a trial by jury.

SEC. 31. In civil cases, the parties may agree on a jury; but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner: The Sheriff, Constable, or other officer appointed by the Trial Justice, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity; he shall deliver the ballots to the Trial Justice, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party; and the officer shall thus proceed until he have drawn six, who shall not be challenged; but if the first twelve shall be challenged, and the parties do not agree to a choice, the last six shall be the jury; and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be drawn and disposed of as above provided.

SEC. 32. If any juror so summoned shall neglect or refuse to appear, in obedience to such *venire*, and shall not, within forty eight hours, render to the Trial Justice who issued the *venire* a sufficient reason for his delinquency, he shall forfeit and pay a fine of two dollars to the Treasury of the County where the cause is tried, to be assessed by such Trial Justice, and collected on his warrant, without other process.

SEC. 33. Every Trial Justice shall have power to enforce the observance of decorum in his Court while holding the same; and, for that purpose, he is authorized to punish any person who shall, in the presence of the Court, offer an insult to himself or a juror, or who shall be willfully guilty of any undue disturbance of his

29. Fees of Justice and Constable in ejectment. Ib, 499.
30. Either party in civil suit entitled to jury trial. 11 Stat., 109.
31. Manner of selecting jury. Ib.
32. Penalty for delinquency as juror. Ib.
33. Punishment for contempts. 11 Stat., 27.

proceedings while sitting officially, as for a contempt, by fine and imprisonment, either or both, not exceeding twenty dollars fine, and twelve hours' imprisonment.

SEC. 34. Every person convicted before a Trial Justice of any offence whatever, and sentenced, may appeal from the sentence to the next Term of the Court of General Sessions for the County. The appelant shall be committed, to abide the sentence of said Court, until he recognize to the State in such reasonable sum, and with such sureties, as the Court requires, with condition to appear at the Court appealed to, and at any subsequent Term to which the case is continued, if not previously surrendered and discharged, and so, from Term to Term, until the final decree, sentence, or order of the Court thereon, and to abide such final sentence, order or decree, and not depart without leave; and, in the meantime, to keep the peace, and be of good behavior.

GENERAL POWERS AND DUTIES.

SEC. 35. Every Trial Justice shall have power to administer any oath, authorized or required by law to be taken, and not directed to be administered by another authority; and any oath so administered shall, to all intents and purposes, be binding and effectual in law.

SEC. 36. Any Trial Justice, on the application of any party to a cause depending before him shall have power and is required to issue a summons citing any person, whose testimony may be required in such, to appear before him at a certain time and place, not more than twenty miles from the residence of such witness, to give evidence, which summons shall be served personally, at least three days before such attendance is required; and if such person shal l neglect or refuse to attend, the Trial Jutice shall have power to issue a rule commanding such witness to be brought before him; or if any witness attending shall refuse to give evidence without good cause shown, the Trial Justice may commit him to the jail of the County, as for a contempt not longer than one day, as well as fine him in an amount not exceeding ten dollars; the costs of rule, commitment, and detention in custody, as well as of the fine so imposed, may be levied of the goods and chattels of such recusant witness, on the order of such Trial Justice, directed to any Constable of the County, as in cases of execution.

SEC. 37. In case it shall appear to the satisfaction of any Trial Justice aforesaid that the attendance of any witness whose testimony may be required in any case before him cannot be had by reason of extreme age, sickness, or infirmity, or of indispensable absence on public official duty, or in consequence of intended removal from the State before the cause can be otherwise ready for trial, or where such witness may be resident in another County, or without the limits of the State, to take the examination of such witness in writing, or cause the same to be done by another Trial Justice, to be used in evidence on the trial of the case: *Provided*, That the parties to such cause shall have notice thereof in time to be present, if they or either should choose to be present: *Provided, also*, That when such examination is so made by another, it shall be sealed up, with the title of the case endorsed, and conveyed by a disinterested person to the Trial Justice authorizing the same.

34. Party convicted may appeal to higher Court. 14 Stat., 403.
35. Trial Justice empowered to administer oaths. 11 Stat., 30.
36. To summon witnesses; refusal to testify how punished. Id., 23.
37. May take depositions in certain cases. Id.

SEC. 38. Any Trial Justice is authorized and required to give, on proper affidavit, an order for reasonable bail, in any action wherein bail may be proper, but not, of course, at the time of commencing, or during the pendency thereof, in any Court of Common Pleas in the County where such Trial Justice resides. He may also take releases of inheritance and renunciations of dower.

SEC. 39. Any Trial Justice of the County is authorized and required to exercise all the powers, and discharge all the duties of the Coroner, in holding inquest over the bodies of deceased persons, and taking all proper proceedings therein, according to the laws of force, in all cases where the Coroner of the County may be sick, or absent, or at a greater distance than fifteen miles from the proper place for such inquiry, or where the office is vacant.

SEC. 40. Any two Trial Justices are authorized and required to grant the writ of *habeas corpus* as fully, effectually and lawfully as may any Judge of the Court of Common Pleas and General Sessions or Judge of the Supreme Court of this State; and if any Trial Justice shall willfully refuse, neglect, or omit to grant the writ of *habeas corpus* to any person or persons requesting or demanding the same, who shall be legally entitled to request or demand the same, he shall forfeit, for said default, the sum of five hundred dollars.

SEC. 41. Each Trial Justice shall keep two books, the one for civil, the other for criminal cases, wherein he shall insert all his proceedings in each case by its title, showing the commencement, progress and dermination thereof, as well as all fees charged or received by him; and shall produce the same when required for the inspection of the Solicitor of the Circuit; and at the expiration of his term of office he shall deposit the same in the Clerk's office for the County for which he was appointed.

SEC. 42. All papers pertaining to the Court of Sessions shall be returned by each Trial Justice to the Clerk, at least ten days before the ensuing term of the said Court, except such as may have been issued or received by him subsequent to that time, which shall be returned on the first day of the term, under the penalties in the following Section prescribed; and every such paper shall be of a size not less than half a sheet of foolscap, folded in the same manner that writs are when issued, and shall be endorsed legibly with the title of the case, nature of the offence, kind of proceeding, and the Trial Justice's name.

SEC. 43. On their failure to return such papers to the Clerk, as directed in the preceeding Section, they shall not receive any fee or compensation for issuing or taking the same, unless it shall appear that the offence was committed or the information made subsequent to such day, or by the return of the Sheriff, Constable or other officer executing such warrant or other process, to be made on oath that the same could not be executed by him in time therefor; and they shall be subject to the payment of a fine of five dollars for every such default, within the discretion of the Court, to which a rule thereof shall be made returnable.

SEC. 44. All fines and penalties imposed and collected by Trial Justices in criminal causes shall be forthwith turned over by them to the County Treasurers of their respective Counties, for County purposes; *Provided*, That when, by law,

38. May take releases of dower, and inheritance. Ib, 30.

39. To act as Coroner in certain cases. Ib, 33.

40. Two Trial Justices to grant writ of *habeas corpus*; Penalty for refusal. 2 Stat., 400—11 23.

41. Trial Justice to keep record books, for civil and criminal cases. Ib, 22.

42. To return papers in the Sessions to Clerk. Ib, 23.

43. Penalty for neglect to return papers. 6 Stat., 552.

any person or persons is or are entitled, as informer or informers, to any portion of the fine or penalty imposed and collected, the same shall be immediately paid over to him or them.

SEC. 45. If any Trial Justice shall neglect or refuse to immediately pay over any and all fines and penalties collected by him in any criminal cause or proceeding, he shall, on conviction thereof, be subject to a fine of not less than one hundred nor more than one thousand dollars, and imprisonment not less than three nor more than six months, and shall be dismissed from office, and be disqualified from holding any office of trust and profit under the State of South Carolina.

SEC. 46. Any Trial Justice, according to the established forms of proceeding for offences against this State, (at the expense of the United States, and to be tried by such Court of the United States as may have cognizance of the offence,) may order the arrest, imprisonment or bail of a person charged with a crime or offence against the United States, alleged to have been committed within this State; and a copy of the process shall be returned as speedily as may be into the office of the Clerk of such Court, together with the recognizance of the witnesses for their appearance to testify in the case, which recognizance any Trial Justice may require on pain of imprisonment; and if such offender be committed within a County in which the offence cannot be tried, the Trial Justice ordering the arrest shall issue his warrant for the removal of the offender and witnesses to the proper County.

SEC. 47. Trial Justices shall be entitled to the same fees for issuing rules against Constables, and hearing the return thereto, as they are allowed by law for issuing a summons, and trying a small and mean cause.

SEC. 48. No account of a Trial Justice, for fees, in any criminal cause, shall be paid, unless he shall declare, on oath, that the said costs in the said cause have not been recovered of the defendant, and that he, the defendant, was unable to pay the same; and, further, that all fines and penalties theretofore collected by such Trial Justice, have been faithfully and fully paid over to the County Treasurer of the County.

SEC. 49. If any Trial Justice shall charge any other fees or for any other services than herein allowed by law, he shall be liable to forfeit to the party injured ten times the amount of excess of fees so improperly charged, to be recovered by suit in the Court of Common Pleas.

SEC. 50. Each and every person appointed to take the Census shall, before entering upon the duties of his office, take, before some Trial Justice, the following oath, to wit: "I, A. B., do solemnly swear (or affirm, as the case may be,) that I will honestly, faithfully and impartially take a correct census of all the inhabitants residing within the portion of the County to which I have been appointed as Census Taker, and will, in all respects, truly perform all the duties with which I am charged: So help me God." And a certificate from the Trial Justice who shall administer the said oath that the same has been duly taken before him, shall accompany and be delivered with each and every return of the census.

44. Fines and forfeitures collected to be paid over to County Treasurer. 14 Stat., 655.
45. Failure to pay over money, how punished. Ib, 656.
46. May arrest for crimes against U. S., and return process to U. S. District Court 11 Stat., 2. Act of Congress. 1789. Chap. 20. 34.
47. Fees for issuing rule against Constable. 11 Stat., 361.
48. Special oaths to be taken before accounts are audited and paid. 14 Stat., 656.
49. Penalty for making unauthorized charges. Ib.
50. Trial Justices to administer oaths to Census takers. Ib, 229.

OF THE COURTS OF TRIAL JUSTICES.

SEC. 50. Trial Justices shall have civil jurisdiction in the following actions, and no others:

1. In actions arising on contracts for the recovery of money only, if the sum claimed does not exceed one hundred dollars.

2. An action for damages for injury to rights pertaining to the person, or the personal or real property, if the damages claimed do not exceed one hundred dollars, and in cases of bastardy.

3. An action for a penalty, fine or forfeiture, where the amount claimed or forfeited does not exceed one hundred dollars.

4. An action commenced by attachment of property, as now provided by statute, if the debts or damages claimed do not exceed one hundred dollars.

5. An action upon bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. Where the payments are to be made by installments, an action may be brought for each installment as it becomes due.

6. An action upon a surety bond taken by them, where the penalty or amount claimed does not exceed one hundred dollars.

7. An action upon a judgment rendered in a Court of a Trial Justice or an inferior Court in a city where such action is not prohibited by Section ninety-four.

8. To take and enter judgment on the confession of a defendant, where the amount confessed does not exceed one hundred dollars, in the manner prescribed by law.

9. An action for damages, fraud in the sale, purchase or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

10. An action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent or attorney, shall not exceed the sum of one hundred dollars.

The plaintiff in such action, at the time of issuing the summons, but not afterwards, may claim the immediate delivery of such property as hereinafter provided.

Before any process shall be issued in an action to recover the possession of personal property, the plaintiff, his agent or attorney, shall make proof by affidavit, showing:

1. That the plaintiff is the owner, or entitled to immediate possession, of the property claimed, particularly describing the same.

2. That such property is wrongfully withheld or detained by the defendant.

3. The cause of such detention or withholding thereof, according to the best knowledge, information and belief of the person making the affidavit.

4. That the said personal property has not been taken for any tax, fine or assessment, pursuant to statute, or seized by virtue of an execution or attachment against the property of said plaintiff; or, if so seized, that it is exempt from such seizure by statute.

5. The actual value of said personal property.

51. Jurisdiction of Trial Justices as defined by the Code of Procedure. Gen. Stat., 630.

On receipt of such affidavit, and an undertaking, in writing, executed by one or more sufficient sureties, to be approved by the Trial Justice before whom such action is commenced, to the effect that they are bound in double the value of such property as stated in said affidavit, for the prosecution of said action, and for the return of said property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against said plaintiff, the Trial Justice shall endorse upon such affidavit a direction to any Constable of the County in which said Trial Justice shall reside, requiring said Constable to take the property described therein from the defendant, and keep the same, to be disposed of according to law; and the said Trial Justice shall at the same time issue a summons directed to the defendant, and requiring him to appear before said Trial Justice at a time and place to be therein specified, and not more than twelve days from the date thereof, to answer the complaint of said plaintiff; and the said summons shall contain a notice to the defendant that, in case he shall fail to appear at the time and place therein mentioned, the plaintiff will have judgment for the possession of the property described in said affidavit, with the costs and disbursements of said action.

The Constable to whom said affidavit, endorsement and summons shall be delivered, shall forthwith take the property described in said affidavit, if he can find the same, and shall keep the same in his custody. He shall thereupon, without delay, serve upon said defendant a copy of such affidavit, notice and summons, by delivering the same to him personally, if he can be found in said County; if not found, to the agent of the defendant in whose possession said property shall be found; if neither can be found, by leaving such copies at the last or usual place of abode of the defendant, with some person of suitable age and discretion. And he shall forthwith make a return of his proceedings thereon, and the manner of serving the same, to the Trial Justice who issued the said summons.

The defendant may at any time after such service, and at least two days before the return-day of said summons, serve upon plaintiff, or upon the Constable who made such service, a notice in writing that he excepts to the sureties in said bond or undertaking; and if he fail to do so, all objection thereto shall be waived. If such notice be served, the sureties shall justify, or the plaintiff give new sureties on the return-day of said summons, who shall then appear and justify, or said Trial Justice shall order said property delivered to defendant, and shall also render judgment for defendant's costs and disbursements.

At any time before the return-day of said summons, the said defendant may, if he has not excepted to plaintiff's sureties, require the return of said property to him upon giving to the plaintiff, and filing the same with the Trial Justice, a written undertaking, with one or more sureties, who shall justify before said Trial Justice on the return-day of said summons, to the effect that they are bound in double the value of said property, as stated in plaintiff's affidavit, for the delivery thereof to said plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against said defendant; and if such return be not required before the return-day of said summons, the property shall be delivered to said defendant.

SEC. 52. The qualification of bail must be as follows:

1. Each of them must be a resident, and householder or freeholder within the State.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the Judge or a Trial Justice, on jus-

tification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification, be equivalent to that of two sufficient bails.

SEC. 53 For the pupose of justification, each of the bail shall attend before the Judge or a Trial Justice at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge or Trial Justice, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

SEC. 54. If the Judge or Trial Justice find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Clerk ; and the Sheriff shall, thereupon, be exonerated from liability.

SEC. 55. If the property, or any part thereof, be concealed in a building or enclosure, the Constable shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession ; and, if necessary, he may call to his aid the power of his County.

SEC. 56. When a Constable shall have taken property, as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 57. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Constable, the Constable shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the Constable against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, and freeholders and householders of the County. And no clain to such property, by any other person than the defendant or his agent, shall be valid against the Constable, unless made as aforesaid ; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

The actions so commenced shall be tried in all respects as other actions are tried in Trial Justices' Courts.

The judgment for the plaintiff may be for the possession, or for the recovery of the possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgement for the defendant may be for the return of the property, or the value thereof, in case a return cannot be had, and damages for taking and holding the same. An execution shall be issued thereon, and if the judgment be for the delivery of the possession of personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer

52. 53. Qualification of bail: Justification of bail. Ib, 532, 533. Rules of Court.
54. Allowance of bail, when Sheriff exonerated. Ib
55. 56. Concealed property, how recovered: How property taken to be kept. Ib. Ib.
57. Proceedings if third party claim property. Ib.

to satisfy any costs or damages recovered by the same judgment out of the personal property of the party against whom it was rendered, to be specified therein, if a delivery thereof cannot be had. The execution shall be returnable within sixty days after its receipt by the officer, to the Trial Justice who issued the same.

In all actions for the recovery of the possession of personal property, as herein provided, if the property shall not have been delivered to the plaintiff, or the defendant, by answer, shall claim a return thereof, the Trial Justice or jury shall assess the value thereof, and the injury sustained by the prevailing party by reason of the taking or detention thereof, and the Trial Justice shall render judgment accordingly, with costs and disbursements.

If it shall appear by the return of a Constable that he has taken the property described in the plaintiff's affidavit, and that defendant cannot be found, and has no last place of abode in said County, or that an agent of defendant could not be found on whom service could be made, the Trial Justice may proceed with the cause in the same manner as though there had been a personal service.

For the indorsement on said affidavit the said Trial Justice shall receive an additional fee of twenty-five cents, which shall be included in the costs of the suit.

SEC. 58. But no Trial Justice shall have cognizance of a civil action:

1. In which the State is a party, excepting for penalties not exceeding one hundred dollars;

2. Nor where the title to real property shall come in question;

3. Nor of a civil action for an assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, where the damages claimed exceed one hundred dollars;

4. Nor of an action against an executor or administrator, as such.

SEC. 59. In every action brought in a Court of Trial Justice, where the title to real property shall come in question, the defendant may, either with or without other matter of defence, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the Trial Justice. The Trial Justice shall thereupon countersign the same and deliver it to the plaintiff.

SEC. 60. At the time of answering, the defendant shall deliver to the Trial Justice a written undertaking, executed by at least one surety, and approved by the Trial Justice, to the effect that if the plaintiff shall, within twenty days thereafter, deposit with the Trial Justice a summons and complaint in an action in the Circuit Court for the same cause, the defendant will, within twenty days after such deposit, give an admission in writing of the service thereof.

Where the defendant was arrested in the action before the Trial Justice, the undertaking shall further provide that he will, at all times, render himself amenable to the process of the Court during the pending of the action, and so much as may be issued to enforce the judgment therein. In case of failure to comply with the undertaking, the surety shall be liable not exceeding one hundred dollars.

SEC. 61. Upon the delivery of the undertaking to the Trial Justice, the action before him shall be discontinued, and each party shall pay his own costs. The

58. Trial Justice not to have jurisdiction in certain cases, Ib, 534.
59. Answer of Title. Ib.
60. Defendant to file undertaking. Ib.

costs so paid by either party shall be allowed to him if he recover costs in the action to be brought for the same cause in the Circuit Court. If no such action be brought within thirty days after the delivery of the undertaking, the defendant's costs before the Trial Justice may be recovered of the plaintiff.

SEC. 62. If the undertaking be not delivered to the Trial Justice, he shall have jurisdiction of the cause, and shall proceed therein; and the defendant shall be precluded, in his defence, from drawing the title in question.

SEC. 63. If, however, it appear on the trial, from the plaintiff's own showing, that the title to real property is in question, and such title shall be disputed by the defendant, the Trial Justice shall dismiss the action and render judgment against the plaintiff for the costs.

SEC. 64. When a suit before a Trial Justice shall be discontinued by the delivery of an answer and undertaking, as provided in Sections fifty-nine, sixty and sixty-one the plaintiff may prosecute an action for the same cause in the Circuit Court, and shall complain for the same cause of action only on which he relied before the Trial Justice; and the answer of the defendant shall set up the same defence only which he made before the Trial Justice.

SEC 65. If the judgment in the Circuit Court be for the plaintiff, he shall recover costs; if it be for the defendant, he shall recover costs, except that upon a verdict he shall pay costs to the plaintiff, unless the Judge certify that the title to real property came in question on the trial.

SEC. 66. If, in an action before a Trial Justice, the plaintiff has several causes of action, to one of which the defence of title to real property shall be imposed, and, as to such cause, the defendant shall deliver an answer and undertaking, as provided in Sections fifty-nine and sixty, and the Trial Justice shall discontinue the proceedings as to that cause, and the plaintiff may commence another action therefor in the Circuit Court. As to the other causes of action, the Trial Justice may continue his proceedings.

SEC. 67. A Trial Justice, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the Clerk of the County where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted thereon and entered in the docket, and from that time the judgment shall be a judgment of the Circuit Court. A certified transcript of such judgment may be filed and docketed in the Clerk's office of any other County, and with the like effect, in every respect, as in the County where the judgment was rendered. But no such judgment for a less sum than twenty-five dollars, exclusive of costs, shall be so docketed or enforced against real property.

SEC. 68. The following rules shall be observed in the Courts of Trial Justices:

1. The pleadings in these Courts are: 1. The complaint by the plaintiff; 2. The answer by the defendant.

2. The pleadings may be oral or in writing; if oral, the substance of them shall be entered by the Trial Justice in his docket; if in writing, they shall be filed by

61. Action discontinued; Costs, who to pay. Ib. 535.
62. 63. If undertaking not given, what. Ib.
64. 65. Another action may be brought; Costs. Ib.
66 Transfer to Circuit Court when title is in question. Ib.
67. Docketing judgments of Justices' Court, in Circuit Court. Ib.
68. Rules to be observed in Trial Justice Courts. Ib, 536, 537.

him, and a reference to them shall be made in the docket.

3. The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

4. The answer may contain a denial of the complaint, or any part thereof, and also a notice, in a plain and direct manner, of any facts constituting a defence or counter claim.

5. Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

6. Either party may demur to a pleading of his adversary, or any part thereof, when it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defence, although it may be taken as true.

7. If the Court deem the objection well founded, it shall order the pleading to be amended; and, if the party refuse to amend, the defective pleading shall be disregarded.

8. In case a defendant does not appear and answer, the plaintiff cannot recover without proving his case.

9. In an action or defence founded upon an account, or an instrument for the payment of money only, it shall be sufficient for a party to deliver the account or instrument to the Court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off.

10. A variance between the proof on trial and the allegations in a pleading shall be disregarded as immaterial, unless the Court shall be satisfied that the adverse party has been misled to his prejudice thereby.

11. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when, by such amendment, substantial justice will be promoted. If the amendment be made after the joining of the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjourment shall be granted. The Court may also, in its discretion, as a condition of amendment, order the payment of costs to the adverse party.

12. Execution may be issued on a judgment, hereafter rendered in Trial Justices' Courts at any time within five years after the rendition thereof, and shall be returnable sixty days from the date of the same.

13. If the judgment be docketed with the Clerk of the Circuit Court, the execution shall be issued by him to the Sheriff of the County, and have the same effect, and be executed in the same manner, as other executions and judgments of the Circuit Court.

14. The Court may, at the joining of the issue, require either party, at the request of the other, at that or some other specified time, to exhibit his account, or state the nature thereof as far forth as may be in his power, and, in case of his default, preclude him from giving evidence of such parts thereof as shall not have been so exhibited or stated.

15. The provisions of this Code of Procedure, respecting forms of action, parties to actions, the rules of evidence, the times of commencing actions, and the service of process upon corporations, shall apply to these Courts.

The defendant may, on the return of process, and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any

other proceedings shall be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the Trial Justice shall file the offer and the acceptance thereof and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

SEC. 69. All and fees and accounts of Trial Justices, and other officers, for criminal proceedings, including cases of vagrancy, when not recovered from the defendant or party complaining, shall be paid by the County wherein the offence shall have been committed; and all accounts rendered for such proceedings shall state when such offence was committed. And the fines imposed and collected in such cases shall be credited and paid to the County Treasurer by the Trial Justice, or other officer imposing and collecting the same. And whenever any criminal warrant or process shall be issued by any Trial Justice, or other officer residing out of the County wherein the offence shall have been committed, it shall authorize the officer executing the same to carry the person charged with the offence before any Trial Justice, resident and being in the County wherein such offence shall have been committed, to be proceeded against according to law; and such officers shall not be allowed any compensation for any further proceedings in any such case beyond issuing such warrant or process.

SEC. 70. Any Trial Justice of the County is authorized and required to exercise all the powers. and discharge all the duties of the Coroner in holding inquests over the body of deceased persons, and taking all proper proceedings therein, in all cases when the Coroner of the County be sick or absent, or at a greater distance than fifteen miles from the place for such inquiry, or when the office is vacant.

SEC. 71. In case any Trial Justice shall neglect or refuse to put the provisions of this Chapter in execution, he shall forfeit the sum of twenty dollars, which penalty shall and may be sued for and recovered by action in any Court of record in this State, and shall be applied one half to the State, to be disposed of by the General Assembly, and the other half to him or them who will inform and sue for the same.

SEC. 72. If a woman be delivered of a bastard child or children, and shall at any time after the birth thereof, give information to some Trial Justice of the County in which she resides, or may be so delivered, and will declare, on oath, who is the father of her child or children, it shall be the duty of such Trial Justice to issue a warrant to apprehend and bring before him, or some other Trial Justice. the person so accused, who shall be obliged to enter into a recognizance, with two good and sufficient sureties, in the penal sum of three hundred dollars, conditioned for the annual payment of twenty-five dollars for the maintenance of the child until the age of twelve years, and so to save harmless the said County.

SEC. 73. When any woman, who is charged with having had a bastard child or children, shall be brought before a Trial Justice, and shall not voluntarily give such information, such Trial Justice may, on information thereof, and that such child is likely to become a burden to the County, issue his warrant against such mother, requiring her to be brought before him, or the next Trial Justice aforesaid

69. County to pay fees of Trial Justices. 14, Stat., 132.
70. Trial Justice to act as Coroner in certain cases. 11 Stat., 33.
71. Penalty for neglect of certain duties. 14 Stat., 399.
72. 73. Proceedings in Bastardy: Woman refusing information to be committed. 5 Stat, 27. 9

who shall commit her to jail until she shall declare the same, or shall give security that the said bastard child shall not become chargeable to the County wherein she resides. Should the person accused evade or resist the warrant so issued, it shall be the duty of the Constable to return the same to the Clerk of the Court as other Sessions papers, with a special note thereof by way of return, on oath, whereupon a bill of indictment may be given out, and, if found, a bench warrant may issue, and, in case the accused shall be arrested on any warrant issued, and shall refuse to enter into such recognizance, he shall be committed to prison, there to remain until he shall enter into such recognizance.

LUNACY AND VAGRANCY.

SEC. 74. Whenever a Judge of Probate, or Judge of the Circuit Court, shall direct an order to any Trial Justice, to enquire as to the idiocy, lunacy or epilepsy of any person, or when information, on oath, shall be given to any Trial Justice, that a person is an idiot, lunatic or epileptic, and is chargeable for his support on the County, it shall be the duty of such Trial Justice forthwith to call to his assistance two licensed practicing physicians, and examine such person, and the evidence of his or her idiocy, lunacy or epilepsy; and if, after full examination, they shall find such person an idiot, lunatic or epileptic, they shall certify to the said Judge, or to the Board of County Commissioners, whether, in their opinion, such person is curable or incurable, and whether his enlargement would be harmless or dangerous, or annoying to the community; and thereupon the Judge or the Board of County Commissioners, in his or its discretion, may make an order that the said person shall be sent to the Lunatic Asylum.

SEC. 75. All persons found wandering from place to place without any known residence, or residing in any city, County or town, who have no visible or known means of gaining a fair, honest and reputable livelihood; all suspicious persons, going about the country swapping and bartering horses, (without producing a certificate of his or their good character, signed by a Trial Justice of the County from which such person last came); likewise all persons who acquire a livelihood by gambling or horse racing, without any other visible means of gaining a livelihood; all keepers of gaming tables, faro banks, or other banks whatsoever used for gaming, known under any other denomination; also, all persons who lead idle and disorderly lives; all who knowingly harbor horse theives and felons, and those who are known to be of that character and description; likewise all persons (not following some handicraft trade or profession, or not having some known or visible means of livelihood,) who shall be able to work, and occupying or being in possession of some piece of land, shall not cultivate such a quantity thereof as shall be deemed by the Trial Justice to be necessary for the maintenance of himself and family; also, all persons representing publicly for gain or reward, without being duly licensed, any play, comedy, tragedy, interlude, or farce, or other entertainment of the stage, or any part thereof; all fortune tellers for fee or reward; and all sturdy beggars, are, and shall be, deemed vagrants, and liable to the penalties of this Chapter.

SEC. 76. Upon the oath of any credible person, that another is, to the best of his or her knowledge or belief, a vagrant, and liable to the penalties prescribed by law, any Trial Justice shall issue his warrant forthwith, to any Constable, requiring the accused to be brought before him; and, upon the arrest of the person so charged, the said Trial Justice shall inquire into the truth of such information,

74. Trial Justice to make inquisition concerning alleged lunacy. 11 Stat., 33.

75. Who shall be deemed vagrants. 5 Stat., 41—11 21.

76. Trial Justice to enquire in cases of vagrancy. Ib. 16.

SEC. 77. He shall proceed to examine how the accused gains a livelihood and maintains his or her family, (if he or she has any,) and if such person shall be adjudged liable to the penalties prescribed by law against such as are deemed vagrants, then, if the accused shall pay all lawful costs and charges of such proceeding, and give bond with sufficient security, to be approved by the Trial Justice, for his or her good behavior for twelve months ensuing, such person shall be discharged; but, on refusal or inability to comply therewith, the Trial Justice may commit such person to jail, and shall transmit a copy of the proceedings, as soon as may be, to the Clerk of the Court of Common Pleas and General Sessions for the County, containing the names of the informer and the accused, and the Trial Justice, and jury, (if any,) together with those of the witnesses and the evidence they gave, which copy shall be filed in the office of the Clerk, for the use of the Court of General Sessions.

SEC. 78. Any Trial Justice is authorized and required, upon the written requisition of the Faculty of the University of South Carolina, through their presiding officer, or of the Solicitor of the Circuit wherein the same is situated, suggesting the name of any offender against the provisions of Section 4 and 5 of this Chapter, and any witness necessary to the investigation, forthwith to issue warrants to bring before him such offender and witnesses; and if, upon investigation before such Trial Justice, sufficient evidence shall appear to satisfy him of the truth of the charge, such offender shall be dealt with as hereinbefore directed; and it shall be the duty of every Sheriff and Constable to whom any such process may be directed to execute the same with all practicable dispatch, according to its mandate; and he shall be required to return, on oath, his proceedings thereon.

SEC. 79. If any Trial Justice shall fail or neglect to execute any of the duties herein set forth and prescribed, he shall be liable to pay a penalty of fifty dollars; and any Constable neglecting or failing in his duty aforesaid, shall be liable to pay twenty-five dollars, to be recovered by information before any Court of competent jurisdiction, one moiety to go to the informer, and the other for the use of the County.

OF ESTRAYS.

SEC. 80. Every Trial Justice, before whom an estray shall be returned, shall cause the same to be appraised, on oath, by three proper persons in the vicinity, who shall certify the appraisement under their hands, together with an accurate description of the color, size, age, brands and marks of said estray, whereupon the said Trial Justice shall enter the said certificate at large in his book; and shall, within ten days thereafter, send a duplicate of the said certificate to the Clerk of the Court of the County in which the said estray shall be taken up.

SEC. 81. At the same time such Trial Justice shall cause the estray, if other than a horse or mule, to be advertised at three or more public places in the County, one of which shall be on the Court House door, for two months, together with a notice where said estray is to be found; and, if a horse or mule, by advertising at the same places and in the nearest gazette once a month for four months.

SEC. 82. Where no owner of an estray shall appear and prove his property

77. To examine accused and require bond, or commit. Ib. Ib.
78. Duty of Trial Justice under Sections four and five. Gen. Stat., 352.
79. Penalty for failure, or neglect. Ib.
80. Appraisement of Estray; Certificate to be filed, 11 Stat., 30.
81. Estray to be advertised. Ib.
82. To be sold; how, and for, by purchaser. Ib.

within the time directed for advertising, it shall be lawful for such Trial Justice, and he shall cause the same to be publicly advertised for ten days, and sold on a credit of six months, except the costs to be paid for in cash; and the purchaser shall give his note, with approved security, to the Trial Justice, in the name of the County Commissioners in the County wherein such estray shall be taken up: which note the said Trial Justice shall deliver immediately to the said County Commissioners for the County in which such estray shall be taken up, who shall have power, in default of payment, to sue for and recover the same.

SEC. 83. If any Trial Justice or Clerk of Court, or person taking up any estray, shall refuse or neglect to perform the duties prescribed by this Chapter, each and every of them shall forfeit and pay the sum of twenty-five dollars, to be recovered and applied to the use of any person who shall inform and sue for the same, and shall moreover be liable in damages to the party aggrieved.

OF SALVAGE.

SEC. 84. In case any person or persons not employed by the master, mariners, or owners, or other persons lawfully authorized, in the salvage of any ship or vessel, or the cargo or provision thereof, shall, in the absence of the master or mariners or owners, save any such ship, vessel, goods or effects, and cause the same to be carried, for the benefit of the owners, into any port, inlet or place of safety within this State, immediately giving notice thereof to a Trial Justice, such person or persons shall be entitled to a reasonable salvage for such services, to be paid by the master or owner of such vessel or goods; and in case of disagreement about the quantum of such salvage, the same to be adjusted by not less than two neighboring Trial Justices, nor more than three.

SEC. 85. When any ship or vessel, or effects, shall be stranded on any part of the coasts of this State, or upon any application of the the commander of any ship or vessel stranded, to any Trial Justice, such Trial Justice shall forthwith summon to his aid one other Trial Justice, and such Trial Justices are hereby required and empowered to give aid, and to employ proper persons for the saving of such vessel in distress, or such vessels, goods, or effects, as shall be stranded or cast away, and also to examine persons upon oath, touching or concerning the same, or the salvage thereof, and to adjust the quantum of such salvage, and distribute the same among the persons concerned in the salvage, in case of disagreement among the parties, or the said persons; and every such Trial Justice, attending and acting for the preservation of any such vessel or goods, shall be paid three dollars per day for his trouble, out of the vessel, goods, or effects saved by their care or discretion.

SEC. 86. If any ship or vessel, goods or effects, shall be stranded, or cast on shore, and no person appears to claim the goods which shall be so saved, two or more neighboring Trial Justices shall take the same into their custody or possession and, as soon as may be, give notice and a schedule in writing of the different articles, [such Justices keeping a copy thereof,] to the County Treasurer, and deliver safely all such goods and effects to the said Treasurer or his order, who shall be responsible for the same, and who shall give public notice thereof in the news-papers of this State, for at least eight months, if no claim shall be made; and if such goods be not claimed within twelve months after such delivery to the

83. Trial Justice to perform duties regarding Estrays, Penalty. 5 Stat., 139.
84. Trial Justice to determine salvages. 4 Stat., 551.
85. May employ aid to save vessels in distress: Compensation. Ib, 552.
86. Unclaimed goods from stranded ship, how disposed of. Ib.

County Treasurer as aforesaid, they are to be publicly sold,[or, if the goods be perishable, to be sold forthwith,] and, after deducting reasonable charges, the residue shall be lodged in the County Treasury, for the use of the State, subject to the claim of the proprietor, his agent or attorney.

SEC. 87. When goods or effects of small value that may be stranded, shall be stolen, without circumstances of outrage or violence, the offender being convicted thereof, shall forfeit and pay treble the value, to be ascertained by two Trial Justices.

SEC. 88. It shall and may be lawful for any Trial Justice, on information, upon oath, of any part of a cargo or effects of any vessel lost or stranded on or near the seacoasts, being unlawfully conveyed or concealed, or of some cause for reasonable suspicion thereof, to issue his warrant for searching for such goods or effects, as in case of stolen goods; and, if the same be found in any house or other place, or in the possession of any person not legally authorized to have the same, and the person in whose possession the same shall be found shall not immediately, upon demand, deliver the same to the owner or person lawfully authorized to receive them, he or she shall forfeit and pay to the owner or owners of such goods, his or their or agent attorney, treble the value, for such refusal.

SEC. 89. Any person discovering where any such goods are wrongfully bought, sold, or concealed, so that the owner, his agent or attorney, shall regain them, shall be entitled to a reasonable salvage, not exceeding twenty five per cent, on the value, to be adjusted by the next neighboring Trial Justice, who is hereby required to adjust the same.

SEC. 90. If any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded, or cast on shore, as aforesaid, and unlawfully taken away, or reasonably suspected to have been, then and in every such case it shall be lawful for the person or persons to whom the same shall be so offered for sale, or any Trial Justice, to stop and seize the said goods and effects; and if the person or persons who shall have offered the said goods and effects to sale, or some other person in his or her behalf, shall not, within ten days' after such seizure, make out to the satisfaction of such Trial Justice that they came honestly possessed of them, then the said goods and effects shall, by order of the said Trial Justice, be forthwith delivered over to and for the use of the owner thereof, on proof of his claim, and the payment of a reasonable reward, not exceeding five per cent, on the value, for such seizure, (to be ascertained by the said Trial Justice,) to the person who shall seize the same. And he, she or they who offered such goods and effects for sale, as aforesaid, shall forfeit and pay to the owner or owners twice the value of such goods, to be recovered according to law.

SEC. 91. If any Trial Justice or other person acting in the preservation or salvage of any vessel, goods or effects, shall be assaulted, beaten, or wounded, every person or persons so assaulting, beating, or interrupting, shall, upon conviction thereof before the Court of Sessions, receive such punishment as the said Court, in their discretion, shall award.

87. If goods stolen how theft to be punished. Ib, 551.
88. Trial Justice to issue search warrant. Ib.
89. Salvage allowed to informer. Ib.
90. Goods unlawfully taken may be seized, and returned to the owner. Ib
91. Persons assaulting salvors of goods to be punished by Court. Ib, 552.

OBSERVANCE OF LORD'S DAY.

SEC. 92. For the better execution of all and every provision of law, "concerning the observance of the Lord's Day," every Trial Justice within his County shall have power and authority to summon before him any person or persons whatsoever, who shall offend in any of the particulars before mentioned, and upon his own view, or confession of the party, or proof of any one or more witnesses, upon oath, the said Trial Justice shall give a warrant under his seal, to seize the said goods cried, showed forth, or put to sale as aforesaid, and to sell the same; and as the other penalties and forfeitures, to impose the fine and penalty for the same, and to levy the said forfeitures and penalties by way of distress and sale of the goods of every such offender, returning the overplus, of any be, after the charges allowed for the distress and sale.

SEC. 93. All and singular the forfeitures or penalties aforesaid, shall be employed and converted to the use of the poor of the County where the said offences shall be committed, and to be delivered into the hands of the County Commissioners for that end, saving only that it shall and may be lawful to and for any such Trial Justice, out of the said forfeitures or penalties, to reward any person or persons that shall inform of any offence against this Chapter, according to his or their discretions, so as that such reward exceed not the third part of the forfeitures or penalties.

REGARDING SEAMEN.

SEC. 94. In case any seaman, or boy apprentice on board any ship or vessel, shall be harbored, secreted or detained, it shall be lawful for any Trial Justice, upon complaint, on oath, made by the master of the said ship, or on his behalf, to inquire into the matter, and if he shall see fit, by warrant under his hand and seal, to cause search to made into any place wherein the said seaman or apprentice may be harbored or secreted, and to cause such seaman or apprentice to be restored to the master of the said ship.

SEC. 95. If any mariners or seamen belonging to any vessel or vessels shall be visited with sickness, then it shall and may be lawful for any one Trial Justice, by an order under his hand, to license the master or mistress of any public house or ordinary, or any private house, to give him or them, being sick as aforesaid, credit for any sum or sums of money as the said master or mistress of any house is willing to trust for their necessary relief.

SEC. 96. It shall not be lawful for any keeper of a public or lodging house for seamen to withhold or detain any chest, bed or bedding, clothes, tools, or other effects, of any seaman, for any debt alleged to have been contracted by such seaman; and in case any such chest, bed, bedding, clothes, tools, or other effects, as aforesaid, shall be withheld or detained, contrary to this Chapter, it shall be lawful for any Trial Justice, upon complaint, upon oath, to be made by any such seaman, or on his behalf, to inquire into the matter, and, if he shall see fit, by warrant under his hand and seal, to cause any such property or effects so withheld or detained, contrary to this Chapter, to be seized and be delivered over to the seaman.

SEC. 97. When any prosecution shall be commenced against any person under the provisions of this Chapter, providing for the punishment of harboring seamen

92. Penalty for violating provisions of this Chapter. 2 Stat., 397.
93. Disposition of fines and penalties inflicted. Ib.
94. Trial Justice may order search for deserted seamen. 6 Stat., 557.
95. May license inn-keeper to give credit to sick seamen. 2 Stat., 119, 598.
96. May reclaim seamens goods held unlawfully. 6 Stat., 557.

who have deserted, and it shall appear to the Trial Justice before whom the prosecution was commenced, that the testimony of any master of a vessel or other transient person will be important on such trial, such Trial Justice shall have authority, after five days' notice to the party accused, to summon such witness before some Judge of the Court of General Sessions, or the Recorder of the City Court of Charleston, to appear and give evidence in the said matter, when such witness shall be examined, with the right to the party accused to examine or cross-examine such witness, as in trials in open Court; and the Judge or Recorder shall certify and seal up such evidence, to be used on the trial of the cause, in the same manner as if the same had been given orally on such trial: *Provided*, That such testimony shall in no case be used unless it shall appear by the affidavit of the Trial Justice before whom such prosecution shall have been commenced, that such witness is not at the time of such trial within the jurisdiction of the State.

FIRE HUNTING.

SEC. 98. Any person or persons who shall hunt with fire in the night time, for every such offence shall forfeit and pay a sum not exceeding ten dollars, and for every deer so killed, a sum not exceeding twenty-five dollars, and for every horse or head of neat cattle, or other stock of any kind, a sum not exceeding fifty dollars.

SEC. 99. All the penalties and forfeitures mentioned in the preceding Section, shall and may be recovered before any Trial Justice in the County where any of the said offences shall be committed, and when received shall be divided and paid, one-half to and for the use of the poor of the County where the offence shall be committed, and the other half to the person who will inform for the same; and the oath of one credible witness, or the confession of the party accused, shall be allowed as sufficient evidence to convict the offender, by every Trial Justice before whom information shall be made of any of the offences aforesaid: *Provided*, That where the owners of any lands shall prosecute for any unlawful hunting and ranging on his or her lands, the oath of such owner shall be sufficient evidence to convict the offender, but in that case the whole penalty shall go to the use of the poor of the County.

In case any person or persons so convicted shall refuse or neglect to pay such fine, then it shall and may be lawful, and the Trial Justice, before whom he is convicted, is hereby required to commit such person or persons, to the common jail in the County where the offender or offenders shall have committed the said crime, there to remain without bail for a term not exceeding three months, for unlawful hunting with fire in the night time, and for a term not exceeding two months for violations of Sections 10, 11, 12, 13 and 15 of this Chapter.

SEC. 100. Any person who will give information to a Trial Justice of any fire hunter, shall, on his conviction, be entitled to thirty dollars, to be paid out of the public Treasury.

SEC. 101. It shall and may be lawful for any two or more Trial Justices in any County or city whatsoever, to cause to come or be brought before them, every person within their respective limits, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain themselves by, but do, for the most part, support themselves by gaming; and if such person or persons

7. In trials under this Chapter, evidence of master may be taken *de bene esse*. 12 Stat., 172 498.
93. Penalty for hunting with fire, in the night time. 5 Stat., 124.
99. Fines how recovered; how disposed of; if not paid, what. 4 Stat., 351.—5 124.
100. Reward for informing. 4 Stat., 111.

shall not make it appear to such Justices that the principal part of his or their expenses is not maintained by gaming, then such Justices shall require of him or them sufficient securities for his or their good behavior for the space of twelve months; and, in default of his or their finding such securities, shall commit him or them to the common jail, there to remain until he or they shall find such securities, as aforesaid.

REGARDING GAMBLING.

SEC. 102. Each Trial Justice and all Constables, shall, before they be qualified to act in their and each of their respective offices, in addition to their respective oaths of office, take an oath to enforce and, to the extent of their power and ability, carry into effect the laws of force in respect to the practice of gambling, and, in all cases, to bring to justice violations of the same, whenever such violations shall come within their view and knowledge.

SEC. 103. It shall be the duty of every Trial Justice, on view or complaint on oath, that any tavern keeper, retailer, or other person, has committed any act or thing contrary to, and in violation of, this Chapter, to cause the arrest, by warrant, under his hand and seal of such tavern keepers, retailers, or other person so offending, and require, as is prescribed by law, security for his appearance at the next Court of General Sessions, then and there to answer to the matter of such complaint, and, in default of security, to commit to jail, there to be kept until discharged by due course of law, and, also, to bind the person making the complaint, or any others whose testimony may be material, to appear at the same time, to give evidence on behalf of the State against such offender.

SEC. 104. When any person or persons have gone, or shall hereafter go, into possession of any land or tenements of another, either as a domestic servant or common laborer, or otherwise, and shall refuse or neglect to quit the premises, so occupied, when required by the person letting the same, or upon the termination of the contract, either by its own limitation or from any other cause, it shall be lawful for the person letting the premises to apply to any Trial Justice, whose duty it shall be to have a notice served upon the person or persons so refusing to quit, to show cause before him, at the expiration of ten days from the personal service of such notice, why he should not be ejected, and if no sufficient cause be then shown, it shall be the duty of the Trial Justice forthwith to issue his warrant, directed to the Sheriff or any Constable, requiring him, without delay, to eject such person or persons from the premises so let, and authorizing him to use such force as may be necessary.

INDENTURES.

SEC. 105. It shall be the duty of any Trial Justice to whom application is made by a person desiring to become the master or mistress of any infant to be bound to service by indenture according to law, to certify under his hand and seal upon such indenture, the presence and approbation of the father, mother, or guardian of such infant, at the time it was executed; and in case such infant so to be apprenticed shall have neither father, mother, or guardian, to approve such indenture, then the presence and approbation of the grand father, grand-mother, or brother, sister, uncle or aunt of mature age, or of his own approval of such inden-

101. Suspected gamblers to be brought before Trial Justice. 2 Stat., 537.
102. Trial Justices and Constables to take oath to enforce laws against gambling. 6 Stat., 27
103. Trial Justices to enforce provisions of law regarding licenses. 11 Stat., 559.
104. Duty in ejectment of tenants at will, domestic servants &c. 13 Stat., 115.
105. Infant apprentices to be bound out by Trial Justices. 2 Stat., 511—11 32.

ture, to be certified thereon, each in the order herein established and enumerated, and in like manner shall certify the approval of such persons as above designated, which indenture or indentures, so executed and certified as aforesaid, shall be good and effectual, to all intents and purposes, as if such apprentice had been of full age, and by indenture of covenant had bound him or herself; or, otherwise shall be void and of none effect.

SEC. 106. In the same manner, any Trial Justice shall certify the assent of the same parties, in like order, to the assignment and transfer of such indenture for sufficient cause, by the master or mistress, to any person exercising the employment specified therein, which said indenture, so assigned, shall be valid and effectual to the assignee, as to the time remaining unexpired, and if the said apprentice had been originally indented to such assignee; the said assignee, on accepting such assignment, shall be equally bound to the said apprentice, according to the tenor of the said indenture, as the original master or mistress was.

SEC. 107. On complaint made by an apprentice, charging his or her master or mistress with misuse, or by the master or mistress against such apprentice, before any two Trial Justices of the County, setting forth the cause of such complaint, it shall be the duty of such Trial Justices to make such order between the parties as the equity and justice of the case may require, subject, nevertheless, to the right of either party to appeal from such order to the Court of Common Pleas for the County at the next ensuing term.

PROTECTION OF LABORERS.

SEC. 108. All contracts made between owners of land, their agents, administrators or executors, and laborers, shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a Trial Justice, whose duty it shall be to read and explain the same to the parties. Such contracts shall clearly set forth the conditions upon which the laborer or laborers engaged to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops.

SEC. 109. Whenever labor is performed under contract on shares of crop or crops, such crop or crops shall be gathered and divided off before it is removed from the place where it was planted, harvested or gathered. Such division to be made by a disinterested person, when desired by either party to the contract. And such disinterested party shall be chosen, by and with the consent of the contracting parties. Whenever the parties fail to agree upon any disinterested party, or, if complaint is made that the division has been unfairly made, within ten days after such division it shall be the duty of the Trial Justice residing nearest the place where such crop or crops are planted, harvested or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract. Such disinterested party or Trial Justice shall receive a reasonable compensation for such service, to be paid by both of the contracting parties, according to their several interests, except in cases of an attempt to wilfully defraud the other by one of the contracting parties; and then such compensation shall be paid by the party so attempting to defraud the other. When such division has been made, each party shall be free to dispose of their several portions as to him or her

106. Indentures to be certified by the Justice. Ib.
107. Two Justices to have jurisdiction of complaints by or against apprentices. 3 Stat., 545 11 32.
108. Contracts to be read to laborers, and witnessed. 14 Stat., 227.
09. Trial Justice or disinterested party to divide crops,. Ib 228.

or them may seem fitting: *Provided*, That if either party be in debt to the other for any obligation incurred under contract, the amount of said indebtedness may be then and there settled and paid by such portion of the share or shares of the party so indebted as may be agreed upon by the parties themselves, or set apart by the Trial Justice, or any party chosen to divide said crop or crops.

SEC. 110. Any Trial Justice or other officer before whom complaint is made, and whose duty it is to try such cases as hereinbefore provided, who shall offend against the true intent and meaning of this Chapter, or shall refuse to hear and determine, impartially, all cases that may be brought before him, under the provisions of this Chapter, and all peace officers, whose duty it is to apprehend all offenders against the laws of the State, who shall refuse to perform their duty in bringing to justice any and all offenders against this Chapter, shall be liable to a charge of malfeasance in office, and, upon proof to conviction, shall be forthwith removed from office, and fined in a sum not less than fifty nor more than one hundred dollars.

OF FORCIBLE ENTRY.

SEC. 111. No person shall make an entry into any lands and tenements, but in case where entry is given by law; and in such case not with strong hand, nor multitude of people, but only in peaceable and easy manner.

Any two Trial Justices of the County wherein such lands and tenements may be situated shall have authority and power to inquire by the people of the same County, as well of them that make forcible entries in lands and tenements, as of them which hold the same with force.

SEC. 112. If it be found, before any of them, that any do contrary to this Chapter, then the said Trial Justices shall cause to be reseized the lands and tenements so entered or holden, as aforesaid, and shall put the party so put out in full possession of the same lands and tenements so entered or holden, as before.

SEC. 113. The forms and proceedings before Trial Justices, in cases of forcible entry and detainer, shall be the same as are prescribed by law in cases where tenants hold over, after the expiration of their leases.

Any two Trial Justices authorized and enabled, upon enquiry, to give restitution of possession unto tenants of any estate of freehold of their lands or tenements which shall be entered upon with force, or from them withholden by force, shall have the like and the same authority and ability (upon indictment of such forcible entries, or forcible withholdings, before them duly found,) to give like restitution of possession unto tenants for term of years, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force.

SEC. 114. Any two Trial Justices are authorized and required to grant the writ of *habeas corpus* as fully, effectually and lawfully as may any Judge of the Court of Common Pleas and General Sessions or Justice of the Supreme Court of this State.

SEC. 115. When a Trial Justice, by whom a judgment appealed from was rendered, shall have gone out of office before a return is ordered, he shall, nevertheless, make a return in the same manner, and with the like effects, as if he were still in office.

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110. Penalty for refusal to perform such duty Ib 229.

111. Trial Justices to have jurisdiction in forcible entry and detainer. 2 Stat., 442. 444.

112. To put party ousted, in possession Ib.

113. Form of proceedings. 6 Stat., 388, —2 445.

114. Two Trial Justices to grant writ of habeas corpus. 2 Stat., 409—11 23.

SEC. 116. If a Trial Justice whose judgment is appealed from shall die, become insane, or remove from the State, the appellate Court may examine witnesses on oath, to facts and circumstances of the trial or judgment, and determine the appeal, as if the facts had been returned by the Trial Justice. If he shall have removed to another County within the State, the appellate Court may compel him to make the return, as if he were still within the County where the judgment was rendered.

OF PRISON BOUNDS.

SEC. 117. In cases where the Clerk of the Court cannot hear and determine an application for the benefit of prison bounds, either on account of interest, sickness, or absence, but in no other cases whatever, any Trial Justice of the County may hear and determine any application for the benefit of the provisions of this Chapter.

SEC. 118. The Clerk or Trial Justice who may hear and determine the application of a prisoner for the benefit of the provisions of Section 9 of this Chapter, shall, if the same be unlitigated, be entitled to receive the sum of two dollars out of the property that may be assigned by the prisoner, as a compensation for his services; and, whenever the same is litigated, the said Trial Justice shall be entitled to receive the sum of four dollars as a compensation for his services, out of the property of the prisoner, if the final decision be against him; but if it be in his favor, then the said sum shall be paid by the plaintiff.

OF FRAUDS.

SEC. 119. If complaint, on oath, be made to any one of the Trial Justices within the State of any one person or persons having defrauded the party complaining, by inveigling, enticing, or by any swindling practices, within the meaning of this Chapter, he shall issue his warrant, directed to any Sheriff or lawful Constable, who is thereupon to apprehend such person or persons, and bring him or them before any one of the Trial Justices of the State, with the cause of his detention, who shall thereupon hold the party so brought before him to bail, with one or more sufficient sureties, to appear at the Court having jurisdiction to try such cause, and answer to any information to be then filed against him or them by the party so injured; but if the party refuse to give bail as aforesaid, the said Trial Justice shall be authorized and required to commit him or them to the common jail of the County in which the complaint is made, there to remain until the next sitting of the Court of the County having jurisdiction to try such cause, then to be brought up for trial.

SEC. 120. If any Trial Justice, shall neglect or refuse to immediately pay over, as required, any and all fines and penalties collected by them in any criminal cause or proceeding, he shall, on conviction thereof, be subject to a fine of not less than one hundred, nor more than one thousand dollars, and imprisonment not less than three, nor more than six months, and shall be dismissed from office, and disqualified from holding any office of trust and profit under this State.

PENALTIES FOR PROFANITY.

SEC. 121. Whoever shall profanely swear or curse in the presence of any Trial Justice, or of the Mayor or other head officer of any city or town corporate

115. 116. How returns made in certain cases. Gen. Stat., 605.
117, Trial Justice to act in cases only when Clerk cannot. 11 Stat., 30.
118. Manner of summoning jury in case of alleged fraud. 4 Stat., 93.
119. Proceedings to be taken against swindlers. 5 Stat., 177.
120. Trial Justice to pay over fines; Penalty for neglect, 14, Stat., 356.

where such offence is or shall be committed, or that shall be thereof convicted by oath of one witness, or by the confession of the party offending, before any Trial Justice of the County, or Mayor, or other chief officer of such city or town corporate where the said offence shall be committed, shall forfeit and pay to the use of the poor of the County where such offence or offences shall be committed, the respective sums herein mentioned, that is to say: every servant, day laborer and common seaman, twenty-five cents; and every other person, fifty cents; and in case any of the persons aforesaid shall, after conviction, offend a second time, such person shall forfeit and pay double, and, a third time, treble the sum respectively by him or her to be paid for the first offence.

Upon neglect or refusal of payment of the said forfeiture, any Trial Justice of the County, or Mayor, or other head officer, of any city or town corporate where the said offence shall be committed, is hereby authorized and required to direct and send his warrant to any Constable of the County where the offence shall be committed, or where the offender shall inhabit, thereby commanding him to levy, by distress and sale of the goods of the offender, the sum so forfeited, for the use of the poor of the County, as aforesaid.

SEC. 122. If any Trial Justice or Chief Magistrate shall willfully and wittingly omit the performance of his duty in the execution of Sections six and seven of this Chapter, he shall forfeit the sum of twenty-five dollars, the one moiety to the use of the informer, to be recovered by action.

No person shall be prosecuted or troubled for any offence against the provisions of Section six of this Chapter, unless the same be proved or prosecuted within ten days next after the offence committed.

SEC. 123. The Trial Justices, or Mayor, or other head officer, shall register, in a book to be kept for that purpose, all the convictions made before him upon the sixth Section of this Chapter, and the time of making thereof, and for what offence, and shall certify the same to the Court of General Sessions for the County where the offences are committed, to be kept there upon record by the Clerk, to be seen without fee or reward.

OF BAIL.

SEC. 124. Trial Justices may admit to bail any person charged with any offence the punishment of which is other than death; and if any person under lawful arrest, on a charge regularly made and not bailable, be brought before a Trial Justice, he shall commit the prisoner to jail: but, if the offence charged be bailable, the Trial Justice shall take recognizance, with sufficient surety, if the same be offered; in default whereof, such party shall be committed to prison, unless it shall clearly appear, upon examination, that the charge is not founded in probability; in which case, the party may be discharged.

SEC. 125. Recognizances entered into before a Trial Justice shall be according to the following scale:

1. If the offence be punishable with fine and imprisonment, or either, the recognizance of the accused shall not be less than two hundred dollars; and if the fine be specified or limited by statute, it shall not be for less than the greatest extent of such fine;

121. Cursing and swearing, how punished. Fine how collected. 2, Stat., 535.
122. Penalty for not executing provisions of Section. Ib.
123. Convictions to be registered. Ib.
124. All persons charged with crime may be bailed except for capital offences. 11, Stat., 25.
125. Scale of recognizance, of Criminal, prosecuters, and witnesses. Ib.

2. The recognizance of any prosecutor or witness, in case of misdemeanor, shall not be for less than one hundred dollars; though, in all cases, the Trial Justice shall cause the same to be in such larger amount as the circumstances may seem to require.

SEC. 126. Upon information made of the materiality of any witness within the State to support any accusation made, or where the materiality of such witness shall be within the knowledge of any Trial Justice, he shall issue his warrant requiring such witness to appear before him or the next Trial Justice, to enter into recognizance, with good security, if deemed proper; which warrant shall authorize the arrest and detention of any such witness in any County in the State; and on being brought before such Trial Justice, and refusing to enter into recognizance, such witness may be committed by the said Trial Justice to the jail of the County, there to remain until he shall be regularly discharged or shall enter into recognizance.

SEC. 127. All Trial Justices before whom recognizances of witnesses, defendant or prosecutor, for their respective appearances at any of the Courts of Sessions for this State, shall be taken, or before whom any information or other paper returnable to the same shall be made, shall lodge the said recognizances, information or other papers, in the respective Clerk's offices of the Courts to which they are returnable, at least ten days before the meeting of the said Courts respectively.

DUTIES OF CONSTABLES.

SEC. 128. Constables shall be chosen in each County by the qualified electors thereof, in such manner as the General Assembly shall direct, for the term of two years. They shall reside in the County, city or beat for which they are elected.

SEC. 129. When any person shall be elected to the office of Constable, he shall repair to the Clerk's office of the County, and, together with the evidence of his election, he shall lodge his bond, in the form prescribed by law, in the penalty of five hundred dollars, with good sureties, not less than two, nor more than five, to be approved in writing by the Clerk; and upon taking the oath herein prescribed, such person shall be entitled to a certificate from the Clerk that he has filed his bond, and taken the requisite oaths, and shall thenceforth be regarded as a regularly qualified Constable; nor shall any person, not so qualified, exercise the powers of a Constable: *Provided*, That nothing herein contained shall prevent a presiding Judge or a Trial Justice from appointing a Constable to act by virtue of such appointment, only on a particular occasion, to be specified in writing.

SEC. 130. Every Constable shall, before receiving the certificate in the last Section provided for, take the following oaths; The oath prescribed by the Constitution for civil officers, the oath against gaming, and the following: "I, A. B. swear (or affirm, as the case may be,) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected (or appointed, as the case may be,) and I will not, directly or indirectly, sell or dispose of said office, or the profits thereof; but will resign, or continue to discharge the duties thereof, during the period fixed by law, if I so long live: So help me God."

126. Witnesses may be committed on refusal to give bond. 1b.

127. Trial Justices to return papers to Clerk, When. 6. Stat., 555.—11, 23.

128. How Constables chosen; term of office; residence. Con., Art., 4, 21.

129. How to qualify and before whom. 11, Stat., 80.

130. Oaths to be administered to Constable. 5, Stat., 384.

SEC. 131. Every qualified Constable shall be entitled to exercise his office throughout the County in which he may be elected or appointed.

SEC. 132. A Constable is authorized, and he shall be bound faithfully and promptly:

1. To execute all processes lawfully directed to him by competent authority;

2. To make return, on oath, to the person issuing the process, to be endorsed in writing on the same, of his proceedings by virtue of it;

3. In every case where he may levy an execution, or serve an attachment on personalty, he shall specify, by endorsement on the execution or attachment, or by schedule thereunto annexed, a list of every article so levied on or attached, and forthwith lodge a copy of such list with the person issuing the process under which he acts. In all cases of sale by a Constable, he shall give ten days' notice, by advertisement at two of the public places in the neighborhood, of the time and place of sales. And in default of paying over the amount of any debt collected, to the party entitled, or his lawful agent, or to the Trial Justice, upon demand, or in default of returning to the defendant, upon demand, any overplus which may be in the hands of the Constable, he shall be liable to pay, in either case, to the party in interest and entitled to receive, the original sum, and interest thereon, at the rate of ten per centum per month, recoverable before a Trial Justice, if not more than one hundred dollars in amount, if greater, before the Court of Common Pleas, besides being liable to be indicted and punished as for a misdemeanor.

SEC. 133. Every Constable shall be bound to execute, when required, every lawful order, judgment and determination of the Trial Justice, and of any Trial Justice's Court; and for disobedience herein he shall be liable to be indicted and punished as for a high misdemeanor.

SEC. 134. For oppression in office, whether by undue personal violence, cruelty, taking an amount of property in unreasonable proportion to the sum to be collected, or for any wilful official misconduct, habitual negligence, habitual drunkenness, or fraud, when established to the satisfaction of a jury, upon indictment, a Constable shall be punished by imprisonment not exceeding one year, and fine not exceeding one thousand dollars, at the discretion of the Court, besides being liable to an action by the party aggrieved; but if any such action for damages shall be instituted against a Constable, and the plaintiff fails, he shall be liable to be mulcted in double or treble costs, by order and at the discretion of the presiding Judge.

SEC. 351. Upon the conviction of any Constable by indictment, the Judge before whom the case may be tried shall have power, by order, to declare the convict to be removed from office, whereupon his office shall be deemed vacant.

SEC. 136. All or so many of the Constables of any County as may be thereto required by the Sheriff shall be bound to attend any of the Circuit Courts, shall be officers of Court, and perform the appropriate duties and services assigned them by the Sheriff and presiding Judge; and each Constable so attending shall be entitled to receive the compensation of one dollar and fifty cents for each day's attendance.

131. To serve processes throughout County. 11, Stat., 80

132. General duty of Constables; penalty if derilect. Code, 256, 317, 360.

133. To execute process for Trial Justice. Penalty for disobecience. Code, 81.

134. Liability of Constable. Ib.

135. Office vacant, when. Ib.

136. To attend Circuit Court when required. 6, Stat., 20.

SEC. 137. Every Constable shall be a conservator of the peace, shall take into custody and carry before the nearest Trial Justice, any person or persons, who may be, in his view, engaged in riotous conduct, or open violation of the peace, and refuse, upon his command, to desist therefrom; and, also, any person who may, in his view, commit any felony or misdemeanor; and for the purpose of preserving the peace, and, also, executing any criminal process, and every Constable shall have the power of ordering out such *posse comitatus* to his assistance as may be necessary to enable him to discharge his duty; and any person refusing to obey his summons shall be liable to indictment and imprisonment as for a misdemeanor.

SEC. 138. The service, by a Constable, of any process in the nature of a notice for personal appearance, shall be by delivering to the party a copy of the same, or by leaving the same at his most notorious place of residence.

SEC. 139. It shall be the duty of every Constable, with whom an execution is lodged for collection, to proceed forthwith to execute the same, according to its exigency, unless ordered by the party in whose favor the same was issued to wait; and every execution shall be returned to the Trial Justice by whom it was issued, within sixty days from the date, and the Constable making such return shall set forth the full execution thereof, or the reason for his failure.

SEC. 140. When any Constable fails to do his duty in the enforcement or return of an execution, the party in whose favor the same may have been issued may apply to any Trial Justice for a rule against such defaulting Constable, requiring him to show cause, after the expiration of two days from the service of such rule, why the execution has not been enforced or returned and on his failing to show cause sufficient, the said Justice may order the same to be made absolute, and the Constable shall be liable for the debt, interest and costs; and if he be unable to pay the same, such liability shall be construed a breach of his official bond, and the same shall be recoverable in an action thereon against his securities.

SEC. 141. In all cases in which Trial Justices shall fail to lodge in the offices of the Clerks of Court of their respective Counties recognizances taken before them for the appearance of witnesses, defendants, or prosecutors before the Court of General Sessions for such County, or informations or other papers made before them, and returnable to such Court, at least ten days before the meeting of said Court, and such default shall arise from the neglect or improper delay of the Constable or other officer charged with the execution of any warrant or other process pertaining to the Court of General Sessions, such Constable shall forfeit his fees and be subject to a fine of five dollars for every such default, if, upon a rule to show cause he shall fail to excuse himself to the satisfaction of the Court.

SEC. 142. If any Constable shall charge any other fees, or for any other service than allowed by law such Constable shall be liable to forfeit to the party injured ten times the amount of excess of fees so improperly charged, to be recovered by suit in the Court of Common Pleas.

137. To arrest disturbers of the peace, &c. 11, Stat., 82.
138. Manner of serving process. Id
139. When execution shall be returned. Id., 369, Gen., Stat., 536.
140. Liability of executi n be not enforced or returned. Id.
141. Penealty for failure to return criminal warrants. 6, Stat., 552.
142. Liability for unauthorized charges. 11, Stat., 151.

CHAPTER XI.

OF THE

OFFICE AND DUTIES OF SCHOOL COMMISSIONERS.

SECTION 1. There shall be elected in each County, at the general election in November, A. D. 1874, and at the general election every two years thereafter, a School Commissioner, who shall hold his office until his successor is elected and qualified. He shall, before entering upon the duties of his office, give bond, for the use of the County in which he is elected, for educational purposes, in the penal sum of twice the amount of his annual salary, with good and sufficient sureties, to be approved by the County Commissioners, conditioned for the faithful and impartial discharge of the duties of his office.

SEC. 2. On the first day of January next succeeding the date of his election, he shall take and subscribe the oath of office prescribed in Section 30, Article II, of the Constitution of this State, which oath he shall file in the office of the Clerk of the Court of the County in which he was elected, and shall immediately enter upon the discharge of his duties, and, upon his failure so to do, or if for any other cause there should be a vacancy in the office, the Governor shall appoint a person to fill such vacancy, who shall qualify fifteen days after his appointment, and shall continue in office until the time prescribed for filling said office by election, as herein provided; and should the person so appointed fail to qualify within the time specified, such failure shall create a vacancy.

SEC. 3. It shall be the duty of each County School Commissioner to visit each of the schools in his jurisdiction at least three times a year, and to note the course and method of their instruction, and the branches taught, and to give such recommendations in the art of teaching, and the method thereof, in each school, as shall be necessary and expedient, so that uniformity in the course of studies and methods of instructions employed shall be secured, as far as practicable, in the schools of the several grades respectively. He shall acquaint himself, as far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school or the classification of its pupils, or the method of instruction employed in the several branches, and shall make such suggestions, in private, to the teachers, as to him shall appear necessary to the good order of the school, and the progress of the pupils.

He shall note the character and condition of the school houses, the sufficiency or insufficiency of the furniture, and shall make such suggestions to the several District Boards as, in his opinion, shall seem conducive to the comfort and progress

1. Election of Commissioners; term of office. 14, Stat., 578. Con., Art. 19, 2.
2. Time to qualify, and oath of office; Governor to fill vacancy. Ib., 578.
3. General duties of School Commissioners. Ib.

of the pupils of the several schools. It shall be the duty of each County School Commissioner to aid the teachers in all proper efforts to improve themselves in their profession.

For this purpose he shall encourage the formation of associations of teachers for mutual improvement; he shall attend the meetings of such associations, and give such advice and instruction in regard to their conduct and management as, in his judgment, will contribute to their greater efficiency. He shall, also, deliver a public lecture to the people in each of the several Districts of the County each year, for the purpose of elevating the standard of education, and increasing the general interest of the people in public schools.

SEC. 4. It shall be his duty to see that in every school under his care there shall be taught, as far as practicable, orthography, reading, writing, arithmetic, geography, English grammar, history of the United States, the principles of the Constitution and Laws of the United States and of this State, and good behavior.

SEC. 5. He shall, on or before the first day of October, each year, forward to the State Superintendent of Education an extended report, containing an extract of the reports made to him by the various school officers and teachers in his County, and showing the condition of the schools under his charge, suggesting such improvements to the school system as he may deem useful, and giving such other information in regard to the practical operation of the common schools, and laws relating thereto, as may be deemed of public interest. He shall also include, in his report, such other matters as he shall be directed to report by the State Superintendent of Education.

SEC. 6. That, should he fail to make the Annual Report required in the preceding Section, he shall forfeit to the school fund of his County his last quarter's salary of that year, and shall also be liable for damages caused by such failure.

SEC. 7. That he shall, at all times, conform to the instructions of the State Superintendent of Education, as to matters within the jurisdiction of said Superintendent. He shall serve as the organ of communication between the State Superintendent and school authorities. He shall transmit to school officers, or teachers, all blanks, circulars and other communications which are to them directed.

SEC. 8. That the several County Treasurers shall retain all the poll tax collected in their respective Counties; and it is hereby made the duty of the said County Treasurers, in collecting the poll tax, to keep an account of the exact amount of said tax collected in each School District in his County; and the poll tax collected therein shall be expended for school purposes in the School District from which it was collected; and any violation of this Section by the County Treasurers shall constitute, and is hereby declared a misdemeanor; and, on conviction thereof, the said County Treasurer shall pay a fine of not less than five hundred (500) dollars, nor more than five thousand (5,000) dollars, to be used for school purposes in the County suffering from such violation, or imprisonment, in the discretion of the Court.

SEC. 9. It shall be the duty of the School Commissioner of Charleston County to organize, in all the School Districts outside of the city of Charleston, a suitable number of schools. He shall also visit said schools not less than three times du-

4. To see that certain branches are taught. Ib., 579.
5. To report annually to State Superintendent of schools. Ib.
6. Penalty for failure or neglect to report. Ib.
7. To conform to instructions of State Superintendent: To distribute blanks Ib.
8. Poll tax to be retained by County Treasurer, for school purposes. 14. Stat., 559.

ring each year, and shall perform such other duties as are prescribed for County School Commissioners.

SEC. 10. The School Commissioner of the County of Charleston shall have jurisdiction only over the schools and all educational interests outside of the corporate limits of the city of Charleston.

SEC. 11. At every regular municipal election held in the city of Charleston, one School Commissioner shall be elected by the legal voters of each ward, who shall continue in office until his successor is elected and qualified. The School Commissioners so elected shall constitute a School Board, and they may assemble at any time and elect a Chairman and Clerk and Superintendent of Schools, whose term of office, duties and compensation shall be prescribed by said Board, but his term of office shall not exceed that of the Board, electing him. The duties of the Board aforesaid shall be the same as those of the Board of School Trustees for the several School Districts, in addition to which they shall, on or before the first day of October, forward to the State Superintendent of Education a report of all matters connected with the school interests of the city of Charleston, as are required of each County School Commissioner. They shall also have power to levy and cause to be collected, as other city taxes are, a sum not to exceed one and one-half of a mill on the dollar on all taxable property in the said city of Charleston; and the money so collected shall be placed in the City Treasury, subject to the order of said City Board of School Commissioners.

SEC. 12. Each County School Commissioner shall receive as compensation for his services, including expenses of transportation within his County, an annual salary of one thousand (1,000) dollars, except the County School Commissioner of Charleston County, who shall receive an annual salary of twelve hundred (1,200) dollars, payable quarterly by the Treasury.

SEC. 13. There shall be, in each County, a Board of Examiners, composed of the County School Commissioner, (who shall, *ex officio*, be Chairman,) and two other members, who shall be appointed by the County School Commissioner, and who shall hold office for the term of two years from the time of their appointment; but no person shall be appointed a member of the County Board of Examiners who is not competent to teach a first grade school.

It shall be the duty of the County Board of Examiners to examine all candidates for the profession of teacher, and to give to each person found qualified a certificate, setting forth the branches of learning he or she may be capable of teaching. Such examination to be renewed every year, and no teacher shall be employed in any of the common or public schools, without a certificate from the County Board of Examiners, or the State Superintendent of Education.

SEC. 14. The Board of County School Examiners shall meet at least twice a year, at such places, and at such times, as the County School Commissioner shall appoint; and the County School Commissioner shall be Chairman and Clerk of the Board, and shall keep a fair record of their proceedings, and a register of the name, age, sex, color, residence and date of certificate of each person to whom certificate is issued, and in case a certificate be cancelled, shall make a proper entry of the same.

9 Duty of Commissioners for Charleston County. Ib., 583.

10. Have no jurisdiction over City. Ib.

11. One Commissioner for each board jointly, to constitute School Board; may levy tax. Ib..

12. Salary of School Commissioners. Ib. 578

13. Commissioner to be Chairman of Board of Examiners. Board to examine teachers. Gen. Stat., 228.

SEC. 15. The school year shall continue for a period of nine months, commencing and ending as, in the opinion of the County Board of Examiners, will best subserve the educational interests of their County; but the County School Commissioner shall have power to limit the school year, according to the school fund apportioned to his County.

SEC. 16. It shall be the duty of each County School Commissioner to divide his County into convenient School Districts, for all purposes connected with the general interest of education, and re-district the same, whenever, in his judgment, the general good requires it. And every School District organized in pursuance hereof, shall be a body politic and corporate, by the name and style of School District No.—, (such a number as may be designated by the County School Commissioner,) of ———County, (the name of the County in which the District is situated,) State of South Carolina; and in such name may sue and be sued, and be capable of contracting and being contracted with, and holding such real and personal estate as it may come into possession of, by will or otherwise, or as is authorized to be purchased by the provisions of this Chapter, all of which shall be used exclusively for school purposes. Each School District shall be confined to the management and control of the Board of School Trustees hereinafter provided for, who shall hold their office for two (2) years, and until their successors are appointed and qualified, and the said Trustees shall be exempt from militia and road duty, and payment of poll tax.

SEC. 17. It shall be the duty of each County Board of School Examiners to appoint for each and every School District in their County three School Trustees, who shall hold their office for two years, and whose duty shall be as hereinafter prescribed; and they shall have power to fill, from time to time, all vacancies which may occur in their respective School Districts in Boards of School Trustees in their County.

SEC. 18. The said Trustees, within fifteen (15) days after their appointment, shall take an oath or affirmation faithfully and impartially to discharge the duties of their office, which oath the members are authorized to administer to each other.

SEC. 19. It shall be the duty of the said Trustees, any two of whom shall constitute a quorum to meet as soon and often as practicable, after having been appointed and qualified, at such place as may be most convenient in the District, and at their first meeting they shall organize by appointing one of their number Clerk of the Board, who shall preside at the official meetings of the Trustees, and record their proceedings in a book provided for that purpose. Each member of the Board of Trustees shall be duly notified of all meetings, by the Clerk of the Board.

SEC. 20. It shall be the duty of the Trustees in each School District to take the management and control of the local educational interests of the same, subject to the supervision of the County School Commissioner, and to visit the school at least once in every month during the school term.

14. Board to meet semi annually: Commissioner to be Clerk. 14, Stat., 530.

15. Length of School Year. Ib., 582.

16. Commissioners to divide Counties into Districts; to name or number them: Trustees to be appointed in each District. Gen. Stat., 229.

17. How Trustees to be appointed. Ib., 230.

18. Trustees to take oath or affirmation. Ib.

19. To hold meetings: to appoint a Clerk. Ib.

20. General duties of Trustees. Ib.

SEC. 21. They shall make, or cause to be made, once in two years, in each School District, by the first day of September, an enumeration of the children between the ages of six (6) and sixteen (16) years, resident within such School District, distinguishing between male and female, white and colored; and the Clerk of said Board of Trustees shall return to the County School Commissioner a duplicate return of the same. Each School Trustee shall receive five (5) cents *per capita* for each child enumerated by him; the account for which shall be audited by the County School Commissioner, and paid, according to law, by the County Treasurer, out of the school fund of the School District wherein the enumeration was made: *Provided*, That in case the enumeration of the scholastic population of any School District is not made, as provided for in this Chapter, by that time, the County Board of School Examiners is authorized to appoint new Trustees for such School District, unless for good and sufficient cause the Trustees have failed to act.

SEC. 22. It shall be the duty of the Board of Trustees to hold a regular session in their School District at least two weeks before the commencement of any or every school term, for the transaction of any kind of business necessary to the prosperity of the school, with power to adjourn, from time to time, and to hold special meetings at any time or place.

SEC. 23. The Board of Trustees shall have power to establish and make all arrangements for the common schools of Districts, and to make the same comfortable, paying due regard to any school house already built, or site procured, as well as to all other circumstances proper to be considered, so as to best promote the educational interests of their District. They shall employ teachers from among those having certificates, and discharge the same when good and sufficient reasons for so doing present themselves; but they shall employ no person to teach in any of the schools under their supervision unless such person shall hold, at the time of commencing his or her school, a certificate to teach, granted by the County Board of School Examiners, or by the State Superintendent of Education.

SEC. 24. Should the Board of Trustees be unable otherwise to procure sites for school houses, they are hereby authorized to appoint a jury of view of five (5) legal voters of the County, who shall locate said site as the public interest may require; but, except in a city, town or village, said site shall not be located within two hundred (200) yards of the dwelling of the owner of the land taken for said site without his consent, given in writing. The said jury shall assess the value of the same, and report their action to the Board of Trustees, who shall secure the title and pay for the site, as decided by the jury of view, out of any moneys available for that purpose; and, upon such payment, the title shall immediately vest in the Trustees, and their successors in office.

SEC. 25. If any person or persons shall threaten, or in any manner interfere with the jury of view herein directed to be appointed, while discharging the duties herein prescribed, he or they, separately or conjointly, shall be deemed guilty of a misdemeanor, and, on conviction in any Court of competent jurisdiction, be fined not more than two hundred dollars, or be imprisoned not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the Court, and any moneys accruing from such fines shall be added to the school fund of the School District wherein the guilty party or parties reside.

21. To take census of children every two years: How paid. Proviso, Ib.
22. To hold regular sessions when; when special meetings. Ib.
23. General powers of Trustees. 14, Stat., 581.
24. May appoint jury to select school site, who shall assess value: Title to vest in Trustees. Ib
25. Penalty for interferring with Jury. Ib.

SEC. 26. When it shall so happen that persons are so situated as to be better accommodated at the school of any adjoining School District, or whenever it may be desirable to establish a school composed of parts of two or more School Districts, it shall be the duty of the respective Boards of Trustees of the School Districts in which such persons reside, or in which such schools may be situated, or of the School Districts, of the the parts of which the school is to be composed, to transfer such persons for education to the School District in which such school house is or may be located; but the enumeration of scholars shall be taken in each District as if no transfer had been made; and such school, when so composed, shall be supported from the school funds of the respective School Districts from which the scholars may have been transferred.

SEC. 27. It shall be the duty of each school teacher to make out and file with the Clerk of the Board of Trustees, at the expiration of each school month, a full and complete report of the whole number of scholars admitted to the school during each month, distinguishing between male and female, the average attendance, the branches taught, the number of pupils engaged in each of said branches, and such other statistics as he or she may be required to make by the County School Commissioner; and until such report shall have been certified and filed by the said teacher, as aforesaid, it shall be the duty of said Board of Trustees to require the same, to forward to the County School Commissioner, before said teacher can draw pay for his or her services. On the filing of the teacher's report, the Clerk of the Board of Trustees shall draw an order, in duplicate, on the County Treasurer for the amount due each teacher, which order shall be countersigned by the County School Commissioner, who shall file the duplicate in his office.

SEC. 28. An annual meeting of each School District shall be held on the last Saturday of June, of each year, at 11 o'clock, A. M., notice of the time and place being given by the Clerk of the Board of Trustees, by posting written or printed notices in three public places of the District, at least ten days before the meeting.

Special meetings may be called by the Board of Trustees, or by a majority of the legal voters of the District; but notice of such special meeting, stating the purpose for which it is called, shall be posted in at least three public places within the District, ten days previous to the time of such meeting. And no business shall be acted upon at any special meeting, not specified in said notice.

SEC 29. The following persons shall be entitled to vote at any District meeting, viz:

All persons possessing the qualifications of electors, as defined by the Constitution of this State, and who shall be residents of the District at the time of offering to vote at such meeting.

SEC. 30. The inhabitants qualified to vote at a school meeting, lawfully assembled, shall have power:

1st. To appoint a Chairman to preside over said meeting.

2nd. To adjourn from time to time.

3rd. To choose a Clerk, who shall possess the qualifications of a voter.

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26. Children may be transferred from one District to another. Ib.

27. Teachers to report to Board monthly; How paid, and when. Gen. Stat., 232.

28. Annual and special meetings of school Districts. 14, Stat., 583.

29. Powers of such meetings. Ib., 584.

30. School money to be held by Treasurer; To be collected at time other County taxes are. Gen. Stat., 232

4th. To raise by tax, in addition to the amount apportioned by the State to their use, such further sums of money as they may deem proper for the support of public schools, said sum not to be more than three dollars for every child in the District between the ages of six and sixteen, as ascertained by the last enumeration, said sum to be collected by the County Treasurer, and to be held by him subject to the order of the Trustees, countersigned by the County School Commissioner, such sums of money to be used as shall be agreed upon at the meeting, either for the pay of teachers' salaries, or to purchase or lease sites for school houses; to build, hire or purchase such school houses; to keep them in repair, and furnish the same with necessary fuel and appendages; or to furnish blackboards, outline maps and aparatus for illustrating the principles of science, or to discharge any debts or liabilities lawfully incurred.

5th. To give such directions and make such provisions as may be deemed necessary, in relation to the prosecution or defence of any suit or proceeding in which the District may be a party.

6th. To authorize the Board of Trustees to build school houses, or rent the same; and to sell any school house site, or other property belonging to the District, when the same shall no longer be needed for the use of the District.

7th. To alter or repeal their proceedings, from time to time, as occasion may require, and to do any other business contemplated in this Chapter.

SEC. 31. The County Treasurer shall pay over all moneys by him received, which shall have been assessed by virtue of the vote of any District meeting, as herein provided for, in the County in which such District is situated, on the order of the Clerk of the Board of Trustees of said District, countersigned by the County School Commissioner, to be used for the purpose directed by the District meeting so held. Said money shall be assessed and collected at the time, and in the manner that County taxes are assessed and collected: *Provided*, That in School Districts where there are less than one hundred children between the ages of six and sixteen, the inhabitants may raise such a sum, per child, as will be sufficient to maintain their schools.

CHAPTERS XII, AND XIII.

OF THE

OFFICE AND DUTIES OF AUDITORS, AND TREASURERS.

SECTION. 1. The Governor is authorized, by and with the advice and consent of the Senate, to appoint the County Auditors, and County Treasurers, and to require such bonds from said officers as he may deem necessary: *Provided*, That the bond of the County Treasurer of Charleston County shall not be less than twenty thousand (20,000) dollars, and the bonds of the County Treasurers of each of the other Counties shall not be less than ten thousand (10,000) dollars.

SEC. 2. The Governor is authorized and empowered, whenever to him, there appears good and sufficient cause, to remove any County Auditor or County Treasurer, and report the fact, together with his reasons thereof, to the General Assembly.

SEC. 3. Any officer so removed, who shall attempt to exercise the functions of the office from which he has been removed, after official notice of such removal; or fail, when application is made to him by his successor, to turn over all the books, papers and property of all kinds whatsoever pertaining to his office, shall be deemed guilty of a misdemeanor, and on conviction thereof shall, for each offence, be fined in a sum not less than five hundred dollars, or be imprisoned for not less than six months.

1. County Auditor and Treasurer to be appointed by Governor; Bond of Treasurer. 14, Stat, 19.145

2. Governor may remove Auditors and Treasurers, and fill vacancies. Ib. 329.

3 Penalty for refusal to turn over books &c. when removed. Ib.

SEC. 4. If the Senate is not in session when a vacancy occurs in any of said offices, then the Governor shall fill such vacancy by appointment, and the officers thus appointed shall continue in office until the expiration of the next term of the General Assembly, and if they shall be confirmed by the Senate they shall continue in office until the expiration of the regular term, and their successors are appointed and qualified.

SEC. 5. The Treasurer of Charleston County is authorized to appoint three Deputies, whose duty it shall be to assist in the collection of taxes in said County. Said Deputies shall each receive, as compensation for their services, the same commissions as are paid for the collection of taxes to the County Treasurer: *Provided*, That the total amount paid to each Deputy, in any current year, shall not exceed the sum of five hundred dollars: *And provided, further*, That the duties of said Deputies shall be confined to the collection of the simple taxes, and shall not include the collection of taxes with penalties attached. Said Deputies shall give such bonds for the faithful performance of their duties as said County Treasurer shall require.

SEC. 6. Each County Auditor is hereby authorized to administer all oaths necessary to be taken by any one in the assessment and return of property for taxation, or necessary in the performance of any duty enjoined upon County Auditors by law.

SEC. 7. The County Auditor shall have the same powers to enforce correct returns from bank officers and bankers, to examine witnesses and enforce their attendance, and have the same aid of the Court of General Sessions of the County, as is provided by law in cases where individuals fail to list their property for taxation, or are suspected of having made false returns; and in all cases of failure to make returns under this Chapter, or in a case of a false return, by any unincorporated bank, banker or bankers, the Auditor shall ascertain the true amount, as near as may be, add fifty per cent penalty thereto, and charge the party or parties with the taxes on the amount so ascertained by him, with the penalty aforesaid; but in cases of unintentional mistake in making the return, the true amount only shall be charged against the parties, without penalty.

SEC. 8. Any person claiming not to have any property shall, upon the demand of the Auditor, make oath to the fact that he has no property; and, if he refuse to make such oath, he shall be deemed guilty of contempt of the Auditor, and, upon complaint of such Auditor to the Court of General Sessions of the County, shall be arrested and confined in the jail of the County until he answers such questions, under oath, as may be propounded to him by such Auditor, and pay the costs of the proceedings.

SEC. 9. The Auditor of State shall prescribe the forms of all returns of taxation, and of the oath that shall be made thereto, and transmit the same to the several County Auditors, who shall cause a sufficient number thereof to be printed and distributed to their assistants; and any return made in any way materially varying therefrom, shall not be regarded as a return.

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4. If Senate not in session, what. Ib 66.
5. Treasurer of Charleston may appoint deputies; Bond; pay; Ib. 366.
6. County Auditor authorized to administer oaths. Ib. 66.
7. Powers of Auditors; Penalty for false returns. Ib, 40.
8. Certain persons required to make oath; penalty on refusal. Ib. 632.
9. State Auditor to prescribe form of returns, and of oath. Ib. 624.

SEC. 10. If any person shall refuse or neglect to make out and deliver to the Auditor a statement of personal property, as provided by this Chapter, or shall refuse or neglect to take and subscribe an oath as to the truth of such statement, or any part thereof, or in case of the sickness or absence of such person, the Auditor shall proceed to ascertain, as near as may be, and make up and return, a statement of the personal property, and the value thereof, with which such person shall be charged for taxation, according to the provisions of this Chapter; and to enable such Auditor to make up such statement, he is authorized to examine any person or persons, under oath, and to ascertain, from general reputation and his own knowledge of facts, the character and value of the personal property of the person thus absent, or sick, or refusing or neglecting to list or swear; and said Auditor shall return the lists so made up by him endorsed: "Refused to list," or Refused to swear," or "Absent," or "Sick," as the case may be, and in his return, in tabular form, shall write the same words opposite the names of each of the persons so refusing or neglecting to list or swear, or absent, or sick.

SEC. 11. The assessment of all personal property, and the valuation of all lands, lots and new structures, which have not previously been valued and entered on the duplicate for taxation, shall be made between the second Monday of July and the second Monday of August, annually; and the Auditor shall, on or before the third Monday of July, deliver to or leave at the residence or place of business of each person within his County, a printed form of statement or return for taxation, with the proper form of oath attached thereto, and shall, at the time he delivers such forms, receive from such person the statement of property for taxation required by this Chapter, verified by the oath of such person, if desired so to do at that time, by such person; but if the person be not ready nor desire to make such statement at the time of receiving such forms, he shall make up and deliver the statement to the Auditor, on or before the first Monday of August of the year he received the forms, and in case of failure so to do shall be held to have neglected to list, and shall be assessed and returned by the Auditor accordingly; and if the Auditor shall fail to deliver the forms aforesaid to any person, such person shall not thereby be excused from listing his property for taxation; but in such case, if he make and swear to his statement, and deliver the same to the Auditor at any time before the second Monday of August of the year in which the return is required, the Auditor shall not return him as neglecting to list.

SEC. 12. Each Auditor shall, at the time he delivers the forms mentioned in the preceding Section, enter in a book, to be provided for that purpose, an alphabetical list of the names of all persons, companies and corporations in his County, as the case may be, designating the section of land or street, and number, as near as may be, of the residence or place of business of such person, company or corporation, which shall be preserved in his office and handed over to his successor, and he shall enter therein a statement of all new structures erected in his County of the value of one hundred dollars or more, at any time during the then current year, commencing on the first day of July, and of all old structures destroyed during the same year, of the value of one hundred dollars or more, and a description of the land or lot on which such structures were respectively erected or destroyed, with the name of the owner of each, and such other things as may be required by the Auditor of State.

10. Auditors duty when no return is made. Id. 623.

11. When assessments to be made; and when returns. Id. 620. 623.

12. Auditors to make alphabetical list of names, and enter annual statement of new structures. Id.

SEC. 13. Each Auditor shall, on or before the twentieth day of August, annually, make out, in tabular form and alphabetical order, a list of the names of the several persons, companies and corporations in whose names any personal property shall have been listed, giving the first Christian name of the several persons; and he shall enter separately, in appropriate columns, opposite each name, the aggregate value of the several species of property mentioned in the tenth Section of this Chapter, making separate lists of the property listed as taxable in incorporated villages, cities and wards, and that listed as taxable out of cities, wards, and incorporated villages, all of which columns shall be accurately added up and footed; and, at the same time, file and preserve in his office statements of property listed by him, or received by him from others.

SEC. 14. Each Auditor shall, annually, at the time of taking the list of personal property, also take a list of all real property in the County subject to taxation, which shall not have been previously listed; and of all new structures, of the value of one hundred dollars or more, not previously listed; and of all old structures, of the value of one hundred dollars or more, which were destroyed during the previous year, and affix a value thereto, with a description of the land or lot on which the same was or is situate, endorse his affidavit thereon that the same is correct, that the valuations therein stated have been made according to the rules prescribed by this Chapter, and return the same with the names of the owners, respectively; and, if the owner of any such new structure shall be the owner of the land on which it is situate, or of a permanent leasehold estate therein, the County Auditor shall add to or deduct from, the value of the land or lease, as the case may be, as the same may stand on the duplicate, the value of such structure so returned. And, when required by the Auditor of State, the County Auditor shall return to the Auditor of State the value of all such structures: *Provided*, That the Auditor shall not deduct any greater amount for the destruction of any structure than was previously charged for the same on the duplicate.

SEC. 15. It shall be the duty of each Auditor to state, in the column of remarks opposite each tax payer's name, in the return made by him, any amount which he believes ought to be added to the valuation of the property listed by such taxpayer, his agent or other person. It shall also be his duty, at any time after his return, if he ascertain that any personal property in his County has not been listed, to list the same, and make return thereof, with the valuation thereof as fixed by the owner or himself, and the name of the owner or person to whom it is taxable, and the Auditor shall charge the same on the duplicate for taxation, adding fifty per cent. to the value, as returned, as penalty.

SEC. 16. Each Auditor shall take and subscribe an oath, which shall be attached to the return of personal property he is required to make by this Chapter, in the following form: "I, ————————————, Auditor of the County of————————————, State of South Carolina, do solemnly swear that the foregoing return contains a true statement of all personal property listed by myself or others for taxation in said————————————, with the valuations thereof, as sworn by others and ascertained by myself, for the present year; that I have diligently endeavored to ascertain and cause all the personal and taxable property in said

13. Auditors to make list of errors, and append value of property. Ib. Ib.

14. When taking list of personalty, annually, shall take list of realty not before entered; additions and deductions to be made. Ib.

15. Auditors to state in column of remarks, what should be added: Duty as to property returned. Ib.

————————————to be listed; and, so far as I know and believe, all property (except such as is otherwise designated in said return) is valued in said return at the price for which it would sell at fair private sale; that I have not knowingly omitted to furnish any person required to list property in said———— ————with the proper form for making the same; nor in any way connived at any violation of the tax laws of this State." And such Auditor shall not be entitled to receive any compensation for his services, until he takes and subscribes such oath; nor until he makes his return of real estate and new structures, with the valuations thereof, under oath, as required by this Chapter.

SEC. 17. Any person, company or corporation, commencing any business in any County of this State, after the first day of July, in any year, the capital or personal property employed in which shall not have been previously listed for taxation in said County for such year, shall, within thirty days after commencing such business, report to the Auditor of the County, under oath, the average amount of the capital intended to be employed in such business, from the time of its commencement to the first day of July next ensuing; and, upon making satisfactory proof to said Auditor, that such capital or property has been regularly listed for taxation in some other County in this State, said Auditor shall file report and proofs in his office, and give to the party a certificate that he or they have complied with the provisions of this Section, and are not liable to taxation in his County on such capital or property for the then current fiscal year. But if he or they shall not satisfactorily prove that such capital or property has been previously listed for taxation in some County of this State, said County Auditor shall charge him or them on his duplicate with such proportion of all taxes levied on others upon similar capital or property, at the place of the business, as the time from the commencement of the business to the ensuing first day of July, bears to one year.

SEC. 18. It shall be the duty of each County Auditor to ascertain the names of all persons commencing any business in his County after the first day of July, annually, whose capital or property employed in such business was not listed for taxation in his County for the then current fiscal year.

SEC. 19. If any person, company or corporation shall commence any business in any County of this State, after the first day of July, in any year, the capital or property employed in which shall not have been previously listed for taxation in said County, and shall not, within thirty days thereafter, make such report to the Auditor of said County as is required in the seventeenth Section of this Chapter, he or they shall forfeit and pay the sum of one hundred dollars, which shall be collected, by civil action, in the name of the County Commissioners, and paid into the County Treaury, for the exclusive benefit of the County. And process in such case may issue out of the Court of common Pleas of the County in which such business was commenced, directed to the proper officer, and be served in any County of this State.

SEC. 20. It shall be the duty of each County Auditor to make out, from the map and descriptions in his possession, and from such other sources of information as shall be in his power, a correct and pertinent description of each tract and lot of real property in his County; and, when he shall deem it necessary to obtain an ac-

16. Form of oath to be attached to return of personal property. Ib.

17. Persons commencing business after first July to make return in thirty days. Ib. 630.

18. Auditors to ascertain names of such persons. Ib. 623

19. Penalty for failure to report to Auditor. Ib. 620.

20. Auditors to make correct description of real property: owners required to furnish same. Ib. 623.

curate description of any separate tract or lot in his district, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession; and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such Auditor, he may employ a competent surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein; and, to the expense of such survey the Auditor of the County shall add the tax assessed upon such real property, and it shall be collected by the Treasurer of the County with such tax, and, when collected, shall be paid, on demand, to the person to whom the same is due; and he shall, in all cases, from actual view, and from the best sources of information within his reach, determine, as near as practicable, the true value of each separate tract and lot of real property in his County, according to the rules prescribed by law for valuing real property; and he shall note in his plat-book, separately, the value of all houses, mills, and other buildings, which exceed one hundred dollars in value, or any tract of land, city, village or town lot; which shall be carried out as a part of the value of such tract or lot; he shall also enter on his plat-book the number of acres of arable or plow land, the number of acres of meadow and pasture land, and the number of acres of wood and uncultivated land, in each tract, as near as may be.

SEC. 21. For the purpose of enabling the Auditor to determine the value of buildings and other improvements, he is hereby required to enter, and fully to examine all buidings and structures, of whatever kind, which are not expressly exempted from taxation.

SEC. 22. Each Auditor shall, as often as the General Assembly shall, by Joint Resolution, direct, make out a return in tabular form, contained in a book to be furnished by said Auditor, of the amount, description and value of the real property subject to be listed for taxation in his County, which return shall contain:

1st. The name of the several persons, companies and corporations in whose name the several tracts of real property, other than town property, in each township within his County shall have been listed; and in appropriate columns, opposite each name, the description of each tract, designating the number of acres, the number of the section, and the part thereof, and of the township or survey, listed in such name, and the value of each separate tract, as determined by the said Auditor.

2d. The names of the several persons, companies and corporations in whose name the several lots of real property in each town, city and village in his County shall have been listed, and in the appropriate columns, opposite each name, the description of each lot, and the value thereof, as determined by the said Auditor, and such description shall designate the town, city or village, the number of lot, and the part thereof; and if a part of a lot is listed, it shall state number of feet along the principal street on which it abuts. If the name of the owner of any tract of land or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot.

SEC. 23. The Auditor, at the time of making the assessments of other real estate for taxation, shall enter in a separate list pertinent descriptions of the real estate exempt from taxation by law, with the valuation thereof made by himself, determined by the rules prescribed by law, and designating the owner of each several parcel.

21. Auditors authorized to enter buildings &c. to find out value Ib.

22. Auditors to make tabular returns to General Assembly when required. Ib. 366, 620, 623.

23. To enter in return description of property exempt from taxation. Ib.

BOARDS OF EQUALIZATION.

SEC. 24. The County Auditor, the County Treasurer, and County Commissioners, or a majority of them, shall form a County Board for the equalization of the real property of their County, with the exception of the real property in the city of Charleston, which shall be equalized by a Special Board, as hereinafter provided. They shall meet as often as the General Assembly shall, by Joint Resolution, direct, at the Auditor's office, in the several Counties, when the County Auditor shall lay before them the returns of the real property made by him, with the additions he shall have made thereto; and having each taken an oath, fairly and impartially to equalize the value of the real estate of such County, according to the provisions of this Chapter, they shall immediately proceed to equalize such valuation, so that each tract, or lot shall be entered on the tax list at its true value; and for this purpose they shall observe the following rules:

1st. They shall raise the valuation of such tracts and lots of real property as, in their opinion, have been returned below their true value, to such price or sum as they may believe to be the true value thereof.

2d. They shall reduce the valuation of such tracts and lots as, in their opinion, have been returned above their true value, as compared with the average valuation of the real property of such County, having due regard to their relative situation, quality of soil, improvement, natural and artificial advantages possessed by each tract or lot.

3d. They shall not reduce the aggregate value of the real property of the County below the aggregate value thereof as returned by the County Auditor, with the addition made thereto by said Auditor, as hereinafter required. The County Auditor shall keep an accurate journal or record of the proceedings and orders of said Board.

SEC. 25. Each County Auditor shall, on or before the thirtieth day of September, one thousand eight hundred and seventy-three, and on the same day in each year thereafter, make out and transmit to the Auditor of the State and the County Commissioners, an abstract of the real property of each District in his County, in which he shall set forth:

1st. The number of acres, exclusive of town lots, returned by said Auditor, with such additions as shall have been made thereto.

2d. The aggregate value of such real property, other than town lots, as returned by said Auditor, inclusive of such additions as shall have been made thereto under the provisions of this Chapter.

3d. The aggregate value of the real property in each town, city and village in his County, as returned by said Auditor, with such additions as shall have been made thereto.

SEC. 26. There shall be an annual County Board for the equalization of the real and personal property, moneys and credits in each County, exclusive of the city of Charleston, to be composed of the County Commissioners, County Auditor and County Treasurer, who shall meet for that purpose at the Auditor's office in each County, on the second Monday of September annually. Said Board shall have the power to hear complaints, and to equalize the valuations of all real and personal property, moneys and credits within the County, and shall be governed by the rules prescribed in the twenty-fourth Section of this Chapter, for the government

24. Who compose County Board of Equalization: Duties of Board. Ib.
25. County Auditors to make return to State Auditor: Nature of return, Ib. 366, 629, 693.
26. Board for Charleston: their powers and duties. Ib. 629.

of the County Boards for the equalization of real property: *Provided*, That said Board shall not reduce the value of the real property of the County below the aggregate value thereof, as fixed by the State Board of equalization, nor below its aggregate value on the duplicate of the preceding year, to which shall be added the value of all new entries and new structures, over the value of those destroyed, as returned by the County Auditor for the current year.

SEC. 27. There shall be a Special Board for the equalization of the real and personal property, moneys and credits of the city of Charleston, to be composed of the County Auditor and six citizens of the said city, to be appointed by the City Council of said city, which Board shall meet annually, at the Auditor's office of said County, on the first Monday in September, and shall have power to equalize the value of the real estate and personal property, moneys and credits within said city, and shall be governed by the rules, provisions and limitations prescribed for the government of annual County Boards for the equalization of real and personal property, moneys and credits; but said Board shall not continue its sessions more than two weeks in one year.

SEC 28. The several County Auditors shall lay before the several annual Boards of Equalization, aforesaid, the valuations of the several tracts and lots of real property in their County or city, as the case may be, as the same was entered on the duplicate of the preceding year, or as fixed by the State Board of Equalization, and of those returned by the said Auditors for the current year, with such maps, returns, lists and abstracts as are in their respective offices; and each shall keep a regular journal of its proceedings, which shall be deposited and kept in the office of the County Auditor. Said City Boards shall have power to equalize the valuations of the several parcels or lots of real property in such city, respectively, by adding to the value thereof in such wards, blocks or other districts therein, which, in their opinion, is too low, and by adding to the value of such several parcels or lots as they may deem too low, and reducing the value thereof in such wards, blocks or other districts as they may deem too high, and by reducing the value of such several parcels or lots as they may deem too high. They shall, also, have power to hear complaints, and equalize the value of the personal property, new entries and new structures in said cities, respectively, returned for taxation the current year, by adding such per centum or amount to the valuations in such wards, or of such individuals, as they may deem equitable and just, and by deducting from the valuations in such wards, or of individuals, such per centum or amount as they deem equitable and just. And said County Boards shall have power to equalize the valuations of real property in their respective Counties, by adding to the value thereof in such villages, towns and other districts not in the city, as they may deem too low, and by adding to the valuations of such several parcels as they may deem too low; also, to reduce the valuations thereof in such villages, towns and other districts, or of individuals, as they may deem too high; nevertheless, the aggregate deductions from the valuations of real estate shall be subject to the limitations prescribed in the twenty-fourth Section of this Chapter; nor shall the aggregate deductions of the valuations of personal property reduce the total value of the personal property in the city or County below that returned by the Auditors.

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26. Powers of Board of equalization: Proviso. Ib.
27. Special Board, for city of Charleston. Ib.
28. Auditors to exhibit valuations to Boards of Equalization. Ib. 623.

SEC. 29. The County Auditor shall add to, or deduct from, the value of the real estate or personal property such per centum, in villages, towns, wards, blocks, or other districts, as may be ordered by the Board of Equalization of the city or County, as the case be, on the duplicate, distributing the same, *pro rata*, to each owner, and shall add to, or deduct from, the valuation of the real or personal property of individuals, companies and corporations, such sum or sums as may be ordered by either of said Boards.

SEC. 30. When the State Board of Equalization shall have completed their equalization of real property among the several Counties, the Auditor of State shall transmit to each County Auditor a statement of the per centum to be added to, or deducted from, the valuation of the real property in each of the several towns, villages and cities, and of real property not in towns, villages or cities, in case an equal per centum shall not have been added to, or deducted from, each; and the County Auditor shall forthwith proceed to add to, or deduct from, each tract or lot in his County, the required per centum on the valuation thereof as its stands after having been equalized by the County Board of Equalization, adding any fraction over fifty cents, and deducting any fraction less than fifty cents, so that the valuation of any tract or lot shall not contain any fraction of a dollar, and charge the same, with taxes, upon such equalized value. The State Auditor shall, also, on or before November fifteenth, annually, give notice to each County Auditor of the rates per centum authorized by law to be levied for the various State purposes, which rates, or per centum, shall be levied by the County Auditor on the taxable property of the County, and charged on the duplicate with the taxes required to be levied and collected for other purposes.

SEC. 31. The Auditor of State shall, from time to time, prepare and transmit, to the several County Auditors all such forms and instructions as he may deem necessary to carry into effect the provisions of these Chapters and decide all questions which may arise as to the true construction of the same, or in relation to the duty of any officer under the same; and the forms thus transmitted shall be observed and used by all County, town and municipal officers. The instructions thus given shall be obeyed by, and the decisions thus made shall be binding upon, all County, town and municipal officers.

SEC. 32. Each County Auditor shall make out, in a book to be prepared for that purpose, in such manner as the Auditor of State shall prescribe, a complete list or schedule of all taxable property in his County, and the value thereof, as equalized, so arranged as that each separate parcel of real property in each district, other than city, village and town property, shall be contained in a line or lines opposite the name of the owner or owners, arranged in numerical or alphabetical order, unless otherwise directed by the Auditor of State, and so that each lot or parcel of real property in cities, villages and towns shall be contained in a line or lines opposite the names of the owners thereof, respectively, arranged in alphabetical order, unless otherwise directed by the Auditor of State. And the value of all personal property shall be set down opposite the names of the owners thereof, respectively; and, if listed by any other person than the owner, for and in name of the owner, the name of such person, and the character in which he acted, shall also be stated in such list, and separate lists shall be made for each city, village,

29. To add to, or deduct from valuations. Ib.

30. Statements, and rates finished by State Auditor. Ib. 396. 620.

31. County Auditors to obey instructions of State Auditor. Ib.

32. To make Schedules of taxable property; to County Treaurer. Ib 620.

town and district, arranged in alphabetical order, unless otherwise ordered by the Auditor of State, which list or schedule, made out as aforesaid, shall be retained in the County Auditor's office, and another made for the County Treasurer, and delivered to him on or before the fifteenth day of November, annually, as his warrant for the collection of the taxes, assessments and penalties charged thereon, each and both of which lists shall be denominated the County duplicate.

SEC. 33. Each County Auditor, after receiving from the Auditor of State, and from such other officers and authorities as shall be legally empowered to determine the rates or amount of taxes to be levied for the various purposes authorized by law, statements of the rate and sums to be levied for the current year, shall forthwith proceed to determine the sums to be levied upon each tract and lot of real property, adding the taxes of any previous year that may have been omitted, and upon the amount of personal property, moneys and credits listed in his County, in the name of each person, company or corporation, which shall be assessed equally on all real and personal property subject to such taxes, and set down in one or more columns, in such manner and form as the Auditor of State shall prescribe; and in all cases where the whole amount of taxes upon the personal property, moneys and credits of any person shall not amount to ten cents, the Auditor shall not enter the same upon the duplicate, if such person has no other taxable property.

SEC. 34. The County Auditors shall not be required to assess on the taxable property of their Counties, or of any town, city or incorporated village, or school district therein, for any purpose, nor for all purposes, added together, any rate of taxation containing or resulting in any fraction other than a decimal fraction, nor in any fraction less than one-twentieth of a mill; but, if the sum required to be raised for any or all purposes results in a fraction less than one-twentieth of a mill, such fraction shall be dropped; and, if more than one-twentieth and less than one-tenth of a mill, the County Auditor shall add enough thereto to make it one-tenth of a mill, and levy the same accordingly.

SEC. 35. The County Auditor shall enter the taxes on the duplicate, to be retained in his own office, in such number of columns as the Auditor of State shall, from time to time, direct; but on the duplicate for the County Treasurer, he shall enter the taxes against each parcel of real and personal property, on one or more lines, opposite the name of the owner or owners; and, in all other respects, the Auditor of State may prescribe forms for County duplicates, as may seem to him most conductive to the interest and convenience of the public, and County Auditors shall conform thereto.

SEC. 36. Each County Auditor shall, annually, in the month of January, make out and record, in a book to be provided for that purpose, a list of all lands, city, village and town lots returned by the Treasurer delinquent at the preceding settlements, describing such lands and lots as the same were described on the duplicate, and charging thereon the unpaid taxes, penalties and assessments as the same were charged on the duplicate, and also the taxes and assessments of the current year, and shall certify to the correctness thereof, and sign the same officially.

33. To determine sum to be levied on each lot of land. Ib
34. Regarding fractional assessments. Ib.
35. How shall be entered on duplicates. Ib.
36. Auditor to make record of delinquents. Ib. 621.

SEC. 37. If the County Auditor shall, at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge the same on the duplicate, with taxes of the current year, and the simple taxes of each preceding year the same may have escaped taxation. And if the owner of any real estate or new structure thereon, subject to taxation, has not reported the same for taxation, according to the requirements of this Chapter, and the same has not been appraised for taxation, the Auditor shall, upon discovery thereof, appraise the same, and, upon making return of such appraisement, shall charge the same upon the duplicate, with the taxes of the then current year, and the taxes of each preceding year it may have escaped taxation, with twenty per cent. penalty upon such taxes of preceding years. And if any real estate shall have been omitted in any return, the Auditor of the County shall appraise the same immediately for taxation, file such appraisement in his office, and charge the same with the taxes of the current year and the simple taxes of the preceding years it may have escaped taxation.

SEC. 38. If the County Auditor shall suspect or be informed that any person or persons, corporation or company, has evaded making a return, or made a false return, of his, her or their personal property for taxation, or have or has not made a full return, or that the valuation returned is less than it should have been, according to the rules prescribed by this Chapter, it shall be his duty, at any time before the settlement with the Treasurer for the year, to notify such party to appear before him at his office, at a time fixed in said notice, together with such other person or persons as said Auditor may desire to examine, and the party, together with any witness called, shall be examined by said Auditor, under oath, (which oath said Auditor is authorized to administer,) touching the personal property, and the value thereof, of such party, and everything which may tend to evince the true amount such party should have returned for taxation.

SEC 39. If any person notified, either as a party or witness, to appear before the County Auditor, as provided for in the preceding Sections, shall refuse or neglect to appear before the County Auditor at the time stated in said notice, or shall refuse to be sworn, or refuse to answer any question put to him by said Auditor, touching the matter under examination as aforesaid, he shall be deemed guilty of contempt of said Auditor, and said Auditor shall make complaint thereof to the Court of General Sessions of the County, who shall thereupon issue an attachment against the person complained of, in the name of the State of South Carolina, directed to the Sheriff of the County, who shall arrest such party anywhere he may be found in the State of South Carolina, and take him personally before said Court, and, upon conviction thereof, such party shall be fined for such contempt of the County Auditor, by said Court, in any sum not exceeding fifty dollars and costs of prosecution, and be confined in the County jail of said County until answers shall be made to all questions which may be propounded to him by said County Auditor, and such fines and costs paid; and when such fine is collected, it shall be paid into the County Treasury to the credit of the County.

SEC. 40. The County Auditor, when he shall deem it necessary, may adjourn the examination provided for in the preceding Section, from time to time; and if he shall find that the party had failed to make any return for taxation, or intentionally made a false return, or intentionally returned his or their property for tax-

37. May correct errors, and supply omissions. Ib. 623.
38. To examine into false or suspected returns. Ib.
39. Penalty for refusal to testify, respecting such returns. Ib.

ation at less than its fair cash value, he shall determine what amount should have been returned by the party, and add fifty per cent. thereto as penalty, and charge the same, with said penalty, against the party on the duplicate, with the taxes of the current year; but if he shall find the party committed a merely unintentional mistake in any return made, he shall add such amount as he may deem just to such return, and charge the party with the simple taxes thereon, adding witness' fees, if any, and the costs of serving the notice.

SEC. 41. If, upon the examination provided for in the thirty-eight Section of this Chapter, the return made to, or by, the Auditor shall be found to be correct, the expenses of the examination shall be paid by the County Auditor out of the County Treasury; but if it shall be found that the return, as made, was intentionally false, or that no return was made, the Auditor shall pay the expenses of the examination out of the County Treasury, and charge the same to the party on the duplicate, in addition to the penalty provided for in such cases; and the amount collected, with the taxes of the party, to re-imburse the Treasury of the County for the expenses paid as aforesaid. But if the return made was unintentionally erroneous, said Auditor shall pay the witness' fees and costs of serving the notice out of the County Treasury, charge the same on the duplicate to the party, and the same shall be collected and paid into the County Treasury, as aforesaid.

SEC. 42. The expenses to be allowed upon the examination provided for by the thirty-eight Section of this Chapter shall be, for serving the notice or notices, the fees allowed to Sheriffs and Constables for serving a summons, and, to a witness, the same fees allowed to witnesses in suits before a Trial Justice's Court.

SEC. 43. Each County Auditor shall add to the value of all personal property which the owner or other person whose duty it is made, by this Chapter, to list the same, shall have refused or neglected to list, or to the value of which such person shall have refused or neglected to swear, fifty per centum on the value, and charge the same on the duplicate, upon which taxes shall be collected and apportioned to the several funds for which taxes are assessed against such owner *pro rata*, in proportion to the respective levies.

SEC. 44. Whenever any tax payer shall fail to make returns to the Auditor of his County within the time prescribed by law, it shall be the duty of the County Auditor to enter on the tax duplicate, against such tax payer, the property charged to him the previous year, with fifty cents penalty added thereto, except in cases of sickness, or absence from the County, when the true amount of property only shall be charged.

SEC. 45. If any person required by this Chapter to list property for taxation, shall been prevented by sickness or absence from giving to the Auditor the statement or return for taxation required, such person or his agent may, at any time prior to the tenth day of September of the year of the assessment, make out and deliver to the County Auditor a statement of the same, sworn to, (which oath the Auditor is authorized to administer,) and shall also make oath before said Auditor that he was sick or absent during the whole time when he should have otherwise listed his property for that year; and, if absent, that such absence was not for the purpose of avoiding the listing of his property. The Auditor shall receive the re-

40 If return prove false fifty per cent. to be added as penalty. Ib.
41. Expense of such examination; how paid. Ib. 623.
42. Sheriffs or Constables fees for summoning witnesses. Ib.
43. Auditors to add to value of all property not returned. Ib.
44. Person failing to make return, to be charged, what. Ib.
45. Auditors to receive returns from sick persons or absentees. 11 Stat., 53, 621, 623.

turn made by the absent person, and charge such party with taxes on the duplicate according to the return so made to him.

SEC. 46. Each County Auditor shall correct the valuation of any parcel or lot of real property on which any structures of one hundred dollars or more in value may have been constructed, or on which any structure of like value may have been destroyed, according to the return thereof, made in accordance with the provisions of this Chapter, and assess the tax upon such correct valuation. Said Auditor shall also correct any errors he may discover in the name of the owner, in the description or quantity of any parcel or lot of real estate, and clerical errors in his duplicate, or in any return made to his office. He shall also correct any errors in his duplicate when ordered by the Auditor of State; but he shall not reduce any assessment of personal property regularly made and returned to his office, nor make any deduction from the valuation of any tract, lot or parcel of real estate, except such as shall be ordered by the State, County or City Board of Equalization, in conformity with the provisions of this Chapter, or upon the written order of the Auditor of State, which written order shall only be made by the Auditor of State upon a statement of facts submitted to him in writing: and when any personal or real property has been listed, returned or entered for taxation in a wrong locality, the County Auditor shall correct the return or entry, and charge such property with the taxes in the locality required by the provisons of this Chapter: *Provided*, That any correction made in the duplicate by the County Auditor shall be entered on both the Auditor and Treasurer's duplicate, except that, in case of the reduction of any assessment or tax, the Auditor may furnish the Treasurer with a certificate of such reduction: *And provided, further*, That each County Auditor shall keep a record of sales and conveyances of real property made in his County, in which he shall enter, in columns, the names of the purchaser and seller, the quality of land conveyed, the location and price of the same, and therefrom correct the County duplicates annually; and, for the purpose of carrying out this provision, the Clerks of Courts and Registers of Mesne Conveyances of each County are hereby required to have the endorsement of the County Auditor on each and every deed of conveyance for real property that the same is on record in his office, before the same can be placed on record in the offices of said Clerks of Courts or Register of Mesne Conveyances, and the said County Auditor shall be entitled to collect a fee of twenty five cents, for his own use, for making such entry and endorsement.

SEC. 47. Each County Auditor shall, annually, on or before November twentieth, make out and transmit, by mail, to the Auditor of State, a complete abstract of the duplicate of his County, which shall state the aggregate value of taxable property, and the total amount of taxes assessed thereon for that year; and he shall, at the same time, also make out and transmit to the Auditor of State an abstract of the number and value of each of the enumerated articles of personal property, the value of merchants' and manufacturers' stock, and the value of all other personal property as returned by him and fixed by the Board or Boards of Equalization; but such abstracts shall be made out in such form and contain such details as the Auditor of State may prescribe.

SEC. 48. Each County Auditor shall attend at his office on or before the fifteenth of January, annually, to make settlement with the Treasurer of his County, and ascertain the amount of taxes, penalties and assessments collected by such

46 To correct valuations where buildings have been erected or destroyed Ib..
47. To transmit abstract on or before 20th of Nov. in each year. Ib.
48. When Auditor to make Settlement with Treasurer. Ib. 366.

Treasurer, and the amount with which such Treasurer is to stand charged on account thereof, and on account of each fund for which a levy was made on the duplicate; and each Auditor shall take, from the duplicate previously put into the hands of said Treasurer for collection, a list of all such taxes, assessments and penalties as such Treasurer has been unable to collect, therein describing the property as described on the duplicate, and shall note thereon, in a marginal column, the several reasons assigned by such Treasurer why such taxes or other charges could not be collected, which list shall be denominated the delinquent list, and which shall be signed and sworn to by the Treasurer before said Auditor; and said Auditor shall record the same in a book, to be provided for that purpose, and transmit an abstract thereof to the Auditor of State, by the County Treasurer, at his next annual settlement with the Auditor of State; and, in making such list, the delinquencies in each district, city, village and town shall be stated separately, and, after deducting the amount of taxes, assessments and penalties so returned delinquent, and the collection fees allowed the Treasurer by law, said Treasurer shall be held liable for the balance of the taxes, assessments and penalties charged on the duplicate: *Provided, however*, That only the following causes shall be assigned by said Treasurer on said delinquent list for not collecting any tax, penalty or assessment, to wit:

1st. That sufficient personal property of the party charged therewith could not be found, out of which to make the same.

2nd. That property was found, but could not be sold for want of bidders; and,

3rd. That such taxes, assessments or penalties were enjoined by a competent Court.

SEC. 49. In making the settlements required by the preceding Section, the County Auditor shall carefully ascertain the true amount collected by the Treasurer on account of the several taxes, penalties and assessments charged on such duplicate, and the amount remaining in the hands of the Treasurer belonging to each fund, and shall give to such Treasurer an official statement of the several sums charged to him, as having been collected by him, for and on account of the several funds. The County Auditor shall also make out and deliver to said Treasurer duplicate certificates, showing the amount charged on the duplicate for the several purposes for which taxes and assessments shall have been levied; also, of the taxes, &c., remaining unpaid, as stated on the delinquent list.

SEC. 50. The various County Auditors are authorized to appoint a sufficient number of assistants to enable them to complete the said assessment within the time fixed by law, and, to defray the expense of making said assessment, the said Auditors shall draw their warrants annually upon the County Treasurers, to be approved by the County Commissioners, for such sums as may be necessary, but not to exceed the following, to wit: The Auditor of Charleston County, two thousand dollars; the Auditors of Richland, Orangeburg, Edgefield, Beaufort, Barnwell, Colleton and Abbeville Counties, one thousand dollars; the Auditors of Chester, Darlington, Fairfield, Greenville, Marion, Sumter and York Counties, eight hundred dollars; the Auditors of Georgetown, Kershaw, Laurens, Lexington, Newberry, Spartanburg and Union Counties, seven hundred dollars; the Auditors of Chesterfield, Clarendon, Marlboro and Williamsburg Counties, six hundred dollars; the Auditors of Anderson, Horry, Lancaster, Oconee and Pickens Counties, five hundred dollars each.

49. To ascertain amount collected on account of each fund. 14 Stat., 55.

50. Auditors may appoint assistants; their compensation. Ib. 621.

SEC. 51. It shall be the duty of the County Auditors to receive the returns and make the assessments provided for in this Chapter, within the times prescribed by law, and for this purpose the offices of the County Auditors shall be kept open to receive the returns of tax-payers during such times as now, or may be hereafter, fixed by law.

COLLECTION OF TAXES.

SEC. 52. All taxes, except as herein excepted, shall be payable, annually, on or before the fifteenth of January after their assessment, and the several County Treasurers shall collect the same in the manner required by law, and give the receipts therefor to the several parties paying the same, in which the real estate paid on shall be briefly described, and the value of the personal property paid on shall be stated, together with the time such taxes may be payable.

SEC. 53. The County Treasurer shall keep his office open for the receipt of taxes from November twentieth to March twentieth.

SEC. 54. When the taxes and assessments charged against any party or property on the duplicate shall not be paid on or before the fifteenth of January, after the assessment thereof, or when the remainder of such taxes and assessments shall not be paid on or before the fifteenth of February next thereafter, together with twenty per cent. penalty on such, remaining unpaid, the County Treasurer shall proceed to collect the same, by distress or otherwise, as may at the time be prescribed by law, together with a penalty of five per cent. on the amount so delinquent, which penalty shall be for the use of the Treasurer, as a compensation for making such collection.

SEC. 55. When the taxes, assessments and penalties charged against any parcel or lot of real property shall not be paid on or before the fifteenth day of January, in each year, or collected by distress or otherwise, as authorized by this Chapter, a penalty of twenty per cent. thereon shall be added by the County Auditor on the County duplicate; and if the said taxes and penalty shall not be paid on or before the twentieth day of February next thereafter, or collected by distress or otherwise, the penalty and said taxes shall be treated as the delinquent taxes on such real property, to be collected in the same manner that is, or may be, prescribed by law; and if the amount of such delinquent taxes, assessments and penalties shall not be paid on or before the second Tuesday in March of the current year, the delinquent taxes, assessments and penalties of the current year shall be due and collected by the sale of such real estate in the manner that is or may be required by law.

SEC. 56. The County Treasurer, immediately upon the receipt of the tax duplicate for the year from the County Auditor, shall cause a notice to be inserted once in two daily newspapers published at the County seat of his County, if two such papers be there published; if not, then in one such paper; and if no daily paper be published at such County seat, then in two weekly papers published at said County seat; but if two such papers be not published, then in one such paper; and if no paper is published in the County, then such notice shall be given in such manner as the County Treasurer may direct, stating the total rate per centum of levies for

51. When Auditor's office open to receive returns. Ib. 623.
52. Taxes payable annually on or before 15th January. Ib. 56, 621.
53. Treasurer's office to be open, when, Ib. 96.
54. When Treasurer shall add penalty; when distrain. Ib.
55. Amount of penalty if tax on real estate be not paid at certain date. Ib. 51, 621.
56. Treasurer to give public notice of collection of taxes. Ib. 56.

State purposes, and the total rate per centum for all other purposes, on the duplicate of that year; and if any special levies have been made on the property of a school or other district, not affecting an entire County, the total rate of levies in such district shall also be stated in such notice.

SEC. 57. All personal property subject to taxation shall be liable to distress and sale for the payment of taxes and assessments; and, at any time after any taxes or assesments shall become due, according to law, the County Treasurer, by himself or deputy, may distrain sufficient personal property of the party against whom such taxes or assessments are charged, if the same can be found in his County, to pay the taxes or assessments so due, with any penalty thereof or chargeable thereon, and the costs that may accrue, and shall immediately advertise the same in three of the most public places in the town, or ward, or district in which such property shall be distrained, stating the time and place in such town, ward or district when and where such property will be sold; and, if the taxes, assessments and penalties for which such property was distrained, together with the costs of the proceeding, shall not be paid before the day appointed for such sale, (which shall not be less than five, nor more than ten days after posting up such notices of sale,) such Treasurer, or his Deputy, shall proceed, at time and place mentioned in said notices, to sell such property, or so much thereof as may be necessary, at public vendue, to the highest bidder; and if such property, or a sufficient amount thereof, shall not be sold at the time and place aforesaid, such Treasurer shall retain the same in his possession, and advertise and offer the same for sale, in manner aforesaid, from time to time, until the same shall be sold.

SEC. 58. If any taxes charged on any real estate be regularly paid, and such real estate be erroneously returned delinquent, and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the County Auditor, he shall, on demand of the party interested, submit the matter to the Auditor of State; and if the Auditor of State approve thereof in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party paying the same, out of the County Treasury, on the order of the County Auditor; and so much of said taxes as shall have been paid into the State Treasury shall be refunded to the County Treasury, and the County Auditor shall retain the same in his next annual settlement, and charge the State therewith.

SEC. 59. Whenever any person or persons, charged with taxes upon the books of any County Treasurer in this State, shall state, in writing, to said Treasurer that he, or they, have been erroneously or illegally charged with the same, said County Treasurer shall submit to the County Auditor a full statement of the facts in the case, which statement shall be forwarded to the State Auditor, with such additional information, relating thereto, as the said County Auditor may be able to give; and said County Treasurer shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes, by distress or otherwise, until the State Auditor shall, in writing, direct him so to do.

SEC. 60. In all cases where the penalty for non-payment of taxes has attached to property held by assignees in bankruptcy, and which could not, or cannot, be sold before the time at which taxes become due; and in all cases where sales of

57. Personal property made for taxes.

58. If tax paid and land be erroneously returned delinquent, sale void.

59. Manner of obtaining relief from erroneous taxation. 1 O. 867.

property, for the settlement of estates, ordered by any Court in this State, have not been, and cannot, for want of time, be made in season for the payment of taxes due thereon, the State Auditor, upon proper evidence that the taxes due upon such property have not been, and cannot be paid, until a sale of said property is made, may remit the penalty which by law attaches for the non-payment of taxes.

SEC. 61. The Treasurer shall be allowed the same fees and costs for making distress and sale of property for the payment of taxes as are or may be allowed to Sheriffs and Constables for making levy and sale of property on execution, traveling fees to be computed from the seat of justice of the County to the place of making distress.

SEC. 62. Each County Treasurer shall, on or before the first Tuesday of April of each year, settle with the Auditor of his County for all taxes, assessments and penalties collected by him on the duplicate of the preceding year, and ascertain the amount with which he shall stand charged on account of such taxes, assessments and penalties; and he shall furnish said Auditor the names of all parties against whom taxes, assessments or penalties are charged on said duplicate, from whom he has been unable to collect such taxes, assessments or penalties, and the amounts uncollected; and when such Treasurer has made a list thereof, he shall swear to and sign the same before said Auditor, assigning only such reasons for non-collection as are mentioned in the forty-eighth Section of this Chapter, (and only such amounts shall be inserted in said list as remain uncollected on account of some one of the causes mentioned in said forty-eighth Section,)and after deducting his fees and the amount in said delinquent list, he shall stand charged with the remainder of the taxes, assessments and penalties charged on said duplicate; but if, in making such settlement, the County Treasurer shall stand charged with any tax, assessment or penalty which, in fact, was not paid prior thereto, he may, at any time while remaining in office, collect the same by distress and sale of property, as in other cases of delinquent taxes, or by action in his own name, as for money paid for the use of the party or parties charged with, or bound to pay said tax, penalty or assessment; and, after going out of office, he may maintain an action in his own name, as aforesaid, for the collection of such taxes, penalty or assessment.

SEC 63. Each County Treasurer shall, within ten days next after each annual settlement with the County Auditor, as required by this Chapter, present to the Auditor of State and Comptroller General, each, one of the duplicate certificates required by the ninety-first Section of Chapter XII to be given to him by the County Auditor; he shall also present to the Auditor of State the abstract of the delinquent list required by the ninety-first Section of Chapter XII, to be transmitted to said Auditor of State; and, upon the receipt of the certificate and abstract aforesaid, the Auditor of State shall settle with such County Treasurer for the money in the hands of such Treasurer belonging to the State, and, upon ascertaining the exact sum or sums payable by such Treasurer, shall certify the same to the Comptroller General, specifying in such certificate the amount belonging to each fund, and the total amount to be paid into the State Treasury; and on receipt of such certificate, the Comptroller General shall issue his certificate specifying as aforesaid; and said County Treasurer shall forthwith deliver said Comptroller's certificate to the Treasurer of the State, and pay into the State Treasury the full amount of all sums so found to be in his hands belonging

60. State Auditor authorized to remit penalties. Ib. 366.

61. Fees and costs allowed to Treasurer on executions, Ib. 57

62. Treasurer to settle with Auditor, when: Treasurer responsible for taxes. Ib 631.

63. Special duty of County Treasurer, in paying over monies collected. Ib.

to the State, and the Treasurer of State shall give to such County Treasurer triplicate receipts therefor, specifying therein the amount of each fund and the aggregate as stated in said certificates, one of which said County Treasurer shall deliver to the Auditor of State, and one to the Comptroller General: *Provided*, Every County Treasurer shall, on the fifteenth of each month, forward to the State Treasurer all the moneys collected by him for or on account of the State taxes, specifying for and on account of what fund the same was collected, for which triplicate receipts shall be returned to them by the State Treasurer; of said receipts, one shall be retained by the County Treasurer, one shall be forwarded by him to the State Auditor, and one to the Comptroller General. The County Treasurer shall, also, on the fifteenth day of each month, notify the Board of County Commissioners, the amount of funds collected for and on account of their respective Counties, and the character of such funds.

SEC. 64. If any chattel tax shall be unpaid at the time fixed for the payment thereof by this Chapter, or returned delinquent, as authorized by this Chapter, the Treasurer may not only distrain property for the payment thereof, but may recover the same, with the penalties thereon, by action at law, proceedings in attachment, or other means authorized by law to be used by private individuals in the collection of debts, which action or other proceedings shall be prosecuted in the name of such Treasurer; and if he shall die or go out of office before the termination of such action or proceeding, or final collection of the money, or any judgment or order therein, his successor or successors may, from time to time, be substituted as plaintiff therein.

SEC. 65. If, after the return of any chattel tax by any County Treasurer as delinquent, the County Treasurer shall know or be informed that the party against whom the same is charged resides in some other County in this State, or has property or debts due him therein, it shall be his duty to make out and forward to the Treasurer of such other County a certified statement of the name of the party against whom such taxes are charged, of the value of the property on which such taxes are levied, the amount of the taxes and penalties assessed thereon, and that the same are delinquent, to the aggregate of which taxes and penalties he shall add twenty-five per cent. as collection fees, upon the receipt of which certificate it shall be the duty of the Treasurer of such County to collect such delinquent taxes and penalties, with the twenty-five per cent. collection fees as aforesaid, for which purpose he shall have the rights, powers and remedies conferred upon the Treasurer of the County in which such taxes are assessed, and be allowed the same fees for distraint and sale of property as if said taxes had been levied in his own County, and, upon collection made, may retain one-half of said twenty-five per cent. collection fees, and shall transmit the balance collected by him to the Treasurer of the County from whom he received such certified statement by mail, at the same time transmitting by mail, to the Auditor of the County from which said certified statement was sent, a statement of the amount thus transmitted by mail to the Treasurer of said latter County, and of whom collected, and said Auditor shall charge his Treasurer therewith, after deducting one-half of said twenty-five per cent. collection fees, and distribute the same to the several funds for which it was levied, and the State proportion shall be paid into the State Treasury at the next annual settlement of the County Treasurer; but, if the Treasurer, to whom any such statement is sent, cannot collect the amount therein named, or any part thereof, he shall return the same, so endorsed, with reasons for such non-collec-

64 Proceedings to collect chattel taxes. Id. 58.

65. Delinquent chattel tax against non-residents; how now distributed. Id.

SEC. 66. All real property returned delinquent by the County Treasurer, as provided for by this Chapter, shall be offered for sale on the second Tuesday in March next after the same shall be thus returned, to satisfy the taxes, assessments and penalties charged thereon.

SEC. 67. On or before the fifteenth of February, annually, the County Auditor shall compare the delinquent list with the duplicate in the hands of the County Treasurer, and designate, on said list, all the parcels of real estate upon which the taxes, assessments and penalties have been paid, including the taxes of the then current year, and proceed to advertise the remainder for sale, as hereinafter provided.

SEC. 68. Each County Auditor in this State shall, annually, cause the list of delinquent lands in the County to be published weekly for two weeks, between the tenth of February and the first Monday in March following, in one newspaper, and no more, published in his County; and if no paper be published in said County, then in some newspaper having the most general circulation in said County, to which list there shall be attached a notice in the following form, to wit: "Notice is hereby given that the whole of the several parcels, lots and parts of lots of real estate described in the preceding list, or so much thereof as will be necessary to pay the taxes, penalties and assessments charged thereon., will be sold by Treasurer of————————————County, South Carolina, at his office in said County, on the second Tuesday (—th) of March, A. D. ———, unless said taxes assessments and penalties be paid before that; and such sale will be continued from day to day until all of said parcels, lots and parts of lots of real estate shall be sold or offered for sale.

————————————,A. D.———,

————————————, Auditor of ———County.

And said Auditor shall insert, at the foot of the record of said delinquent list, a copy of said notice, and certify to the correctness thereof, in what paper the same was published, when, and how long, and sign the same officially.

SEC. 69. The County Treasurer, or his Deputy, shall attend at his office on the first Monday in March, and then and there, after the hour of 10 o'clock in the morning, offer for sale, at public auction, each tract, parcel or lot of real estate described in the advertisement aforesaid, on which the taxes, assessments and penalties charged thereon shall not have been paid; and the person then and there offering to pay the taxes, assessments and penalties charged thereon, for the least quantity thereof, shall be the purchaser; and the Treasurer shall continue such sale, from day to day, until each tract, parcel or lot of real estate described in said advertisement, upon which the taxes, assessments and penalties shall not have been paid, shall be sold or offered for sale: *Provided*, That the sale thus made shall be denominated the delinquent land sale: *Provided, further*, That if the land advertised for sale as aforesaid, except in incorporated cities and villages, cannot be sold for at least one-fourth of its assessed value, the Auditor shall, on behalf of the State, purchase sufficient thereof, at that rate, to satisfy the amount of the taxes, assessments and penalties aforesaid,

66. Real property returned delinquent to be sold; when. Ib. 621.

67. Auditor to ascertain who are delinquent 15th Feb. and advertise lands for sale. Ib.

68. To advertise for two weeks: Form of notice. Ib

69. State to purchase lands in certain cases. Proviso. Ib.

SEC. 70. If the party purchasing any part of real estate at the sale mentioned in the preceding Section shall fail to pay the Treasurer immediately the amount of taxes, assessments and penalties charged thereon, the Treasurer shall immediately offer the same for sale, as if no sale had been made; and the purchaser or purchasers so failing to make payment of said taxes, assessments and penalties, shall forfeit and pay a penalty of fifty per cent. on the amount thereof, which shall immediately be charged on the duplicate of the County, by the County Auditor, against such purchaser or purchasers, and collected as taxes, and with like penalties for delinquency; and, when collected, one half thereof shall be paid into the County Treasury, and the other half into the State Treasury.

SEC. 71. The County Auditor, or his Deputy, shall attend all sales of delinquent real estate made by the Treasurer of his County, and shall make a record of such in a substantial book, therein describing the several parcels offered for sale, as described in the advertisement aforesaid, and stating how much of each parcel was sold and to whom sold; and if any parcel was offered for sale and not sold for want of bidders, or shall have been bid in on behalf of the State, he shall so enter it on record; and the County Auditor shall make out and certify a copy of said record, and forward the same to the Auditor of State, by the County Treasurer, at the time said Treasurer makes his annual settlement with the Auditor of State next after such sale.

SEC. 72. All moneys received by the County Treasurer at any delinquent land sales shall be distributed, by the County Auditor, to the sveral funds for which they were respectively levied, after deducting the expenses of the advertisement aforesaid, and the State's proportion paid into the State Treasury by the County Treasurer, at his next annual settlement with the Auditor of State after such sale.

SEC. 73. If the County Auditor, by inadvertence or mistake, or any other cause, shall have heretofore omitted, or shall hereafter omit, to publish the delinquent list of his County, it shall be his duty, unless all taxes, assessments and penalties charged thereon shall have been paid prior to the next April settlement thereafter, of the County Treasurer, to charge the several parcels of real estate described in said list with said taxes, assessments and penalties, with the taxes, assessments and penalties of the year next succeeding such omission, and record, certify and publish the same as part of the delinquent list of such succeeding year, according to the provisions of this Chapter.

SEC. 74. Upon the payment of the proper amount into the County Treasury, and fifty cents to the County Auditor for the certificate, and ten cents for the transfer of each parcel of real estate purchased at delinquent land sale, the County Auditor shall give to each purchaser at such sale a certificate of purchase, in which he shall describe such parcel as the same was described in the delinquent list, and state when the same was sold, and for what amount; and, if only a part of any parcel advertised was sold, he shall specify the quantity sold, and authorize a surveyor, at the request of the purchaser, his heirs or assigns, to lay off, by metes and bounds, as near as may be, in a square form, at the most North-westerly corner of any tract or lot of land described in

70. Purchaser making default in payment, land to be re-sold. Ib. 69.

71. Auditor to attend sales and keep record and forward copy to State Auditor. Ib.

72. Distribution of proceeds of sales. Ib.

73. Omission to publish delinquent list to be rectified by adding same to list of succeeding year. Ib.

74. Auditor to furnish Certificates of sale; Fees for same. Ib.

said certificate, the quantity so sold ; and, if the sale be made from any city, village or town lot, or any part thereof, the surveyor shall be directed to so lay off the quantity sold that the same shall extend from the principal street or alley forming the most convenient front to said lot to the rear of the lot, and to bound the same by lines as nearly parallel with the outlines of said lot as practicable.

SEC. 75. No deed shall be made for any real estate sold at delinquent land sale until the expiration of two years from and after such sale. Nor shall any survey thereof, required by any certificate of purchase, be made until the expiration of the same period of time.

SEC. 76. The certificate of purchase at any delinquent tax sale shall be assignable in law, by endosement thereon, and an assignment thereof shall vest in the assignee and his legal representatives, all the right and title of the original purchaser.

SEC. 77. All real estate which has been, or may hereafter be, sold for taxes, assessments and penalties at delinquent sale, under the laws of this State, may be redeemed at any time within two years from and after such sale, and all such real estate belonging, at time of such sale, to minors, insane persons, married women, or persons in confinement, may be redeemed at any time within two years from and after the expiration of such disability.

SEC. 78. Any person or persons desiring to redeem any real estate sold at delinquent land sale, under any law of this State, may, within one year after the sale thereof, or within one year after the expiration of the disabilities named in the preceding Section, deposit with the County Treasurer of the County in which such sale was made, upon the certificate of the County Auditor, a sum equal to the amount for which such real estate was sold, with all legal charges paid by the purchaser at sale, and subsequent taxes paid by such purchaser, heirs or assigns, and twenty-five per cent. penalty thereon, and the value of growing crops, if any there are, and two dollars to pay the expense of advertising, as hereinafter provided ; and any person desiring to redeem any such real estate after the expiration of one year, and within two years after any such sale, or the removal of any of the disabilities aforesaid, may deposit with the County Treasurer aforesaid, on the certificate of the County Auditor, an amount of money equal to that for which such real estate was sold, and taxes subsequently paid thereon by the purchaser, and those claiming under him, the legal charges as aforesaid, and fifty per cent. penalty thereon, and two dollars to pay the expense of advertising, as aforesaid ; also, paying the Auditor fifty cents for his services in attending to such redemption in either case.

SEC. 79. All applications for the redemption of real estate sold at delinquent tax sale, as aforesaid, shall be made to the Auditor of the County in which such real estate shall have been sold by a party interested in the title to said estate ; and upon such application the Auditor shall give to such party the certificate mentioned in the preceding Section, describing the real estate sought to be redeemed, and specifying the sum necessary for such redemption, and adding thereto the two dollars for expense of publishing the notice of such redemption, upon the presentation of which to the County Treasurer of the County, and payment of the

75. Survey, or deed not to be made under two years. 1b. 61.
76. Certificates assignable by endorsement. Ib.
77. Lands redeemable within two years. Ib.
78. How lands redeemed ; What to be paid. Ib.
79. Applications for redemption to be made to Auditor. Ib.

sums mentioned therein into the County Treasury, the Treasurer shall give to the applicant duplicate receipts therefor, describing the property as described in said certificate of the Auditor; and, upon the delivery of one of such receipts to the County Auditor, said Auditor shall immediately cancel the sale, and transfer the property to the party redeeming the same; and such payment and cancellation shall operate as a release of all the rights of the purchaser at such sale, his heirs and assigns.

SEC. 80. The County Auditor, immediately upon the redemption of any real estate as aforesaid, shall publish in some newspaper of general circulation in his County, for two consecutive weeks, a notice, addressed to the purchaser and his assigns, that the money has been deposited in the County Treasury of his County for the redemption of such real estate, describing the same and the time when sold for taxes; for the publication of which notice said Auditor shall pay the sum of two dollars out of the County Treasury.

SEC. 81. Any tenant in common may redeem his individual share in any real estate sold at delinquent land sale in the manner provided for in the preceding Sections, upon payment into the County Treasury of his equal proportion of the sum requisite for the redemption of the whole, and two dollars for the publication of the notice of such redemption.

SEC. 82. Upon the demand of the purchaser or his legal representatives of any real estate redeemed as aforesaid, and the surrender of the certificate of purchase to the County Auditor, and payment of fifty cents to said Auditor for his services in attending to such redemption, the Auditor shall cancel said certificate of purchase, file the same in his office, and give to such purchaser or his legal representatives an order on the County Treasurer for the amount of money deposited in the County Treasury in manner aforesaid, for the redemption of the real estate described in such certificate of purchase.

SEC. 83. Any person interested may, at any time before the deed is made by the County Auditor, with the consent of the purchaser of any parcel of real estate sold at delinquent land sale, and the delivery and cancellation of the certificate of purchase, redeem such real estate; and in such case, and, also upon deposit of money in the County Treasury, as aforesaid, for the redemption of any real estate sold at such sale, the County Auditor shall note such redemption or deposit, and by whom and when made, on the record of delinquent land sales, and sign his name officially thereto, for doing which any party redeeming by consent, as aforesaid, shall pay said Auditor fifty cents as his fees.

SEC. 84. After the lapse of two years from the time of any delinquent land sale, if any purchaser of any real estate at such sale, or his legal representative, shall present to the Auditor of the County in which such sale was made a certificate of purchase of the whole of any tract or lot of real estate sold at such sale, or in case of the sale of part of a tract or lot offered at such sale, present to said Auditor the certificate of sale, and the survey and plat of the quantity purchased, made by the Surveyor, as required by this Chapter, and the taxes and assessments levied on the real estate described in such certificate, or certificate and plat, shall have been so far paid as that the same is not again delinquent; said Auditor shall (upon payment to him of two dollars as his compensation therefor) make and deliver to

80. Notice of application to be published. Id., 62
81. Tenant in common may redeem individual share. Ib.
82. Money to be refunded to purchaser, on redemption. Id.
83. Manner of redeeming land by consent. Ib.
84. After two years Auditor to execute deeds which shall be *prima facie*, evidence of title. Gen. Stat., 85.

such purchaser, his heirs or assigns, as the case may be, a deed of conveyance for the real estate so sold as aforesaid: *Provided*, That where the whole of two or more several tracts or lots, or parts of tracts or lots, of real estate have been, or shall be, sold to the same party, or the certificates of purchase of different tracts or lots, or parts of tracts of lots, have been, or shall be, legally acquired by one person, and the party thus purchasing or holding certificates, as aforesaid, shall demand one deed for the whole of the real estate so purchased, the County Auditor shall include the whole in one deed, if all the requirements of this Chapter have been complied with, so that the party demanding such deed would be entitled to separate deeds for the said several parcels of real estate; and if the whole of any tract or lot of real estate has been acquired by one party by different purchases, or by assignments of certificates of purchase, the survey and plat aforesaid shall be dispensed with, and the deed made for the whole; and the deed so made by the County Auditor for any real estate sold at delinquent land sale shall be *prima facie* evidence of a good title in the grantee, his heirs and assigns, to the real estate therein described.

SEC. 85. Each tract or lot of land, or part thereof, or city, village or town lot or part thereof, which shall be offered for sale by the County Treasurer at any delinquent land sale, as provided for in this Chapter, and not sold for want of bidders, shall thereby become forfeited to the State of South Carolina, and thenceforth all the right, title and interest of the former owner therein shall be vested in the State of South Carolina, and shall be designated by the County Auditor on the list of delinquent lands as "forfeited," and transferred to the State of South Carolina, and charged with taxes and penalties, as if the same was purchased by a private individual, and returned by the Treasurer as delinquent until sold as forfeited real estate.

SEC. 86. The County Auditor shall enter in a substantial book, to be provided by him for that purpose, at the expense of the County, and denominated the "Forfeited Land Record," a list of all real estate forfeited to or purchased in behalf of the State, according to the provisions of this Chapter, certify to the correctness thereof, and sign the same officially; a copy of which list he shall certify and transmit to the Auditor of State, by the County Treasurer, at the time the Treasurer makes his annual settlement with the Auditor of State, next after the forfeiture or purchase of such real estate, and the Auditor of State shall record the same in his office.

SEC. 87. The County Auditor of any County in which any real estate shall hereafter be sold at delinquent land sale shall make deeds therefor, though the real estate may have been, or shall hereafter be, set off into another County subsequent to such sale, and such deed shall have the same effect as if such real estate had remained in the County in which it was sold.

SEC. 88. All real estate sold at delinquent land sale, under the provisions of this Chapter, shall, immediately upon the certificate of purchase being given therefor be transferred by the County Auditor to the name of the purchaser.*

SEC. 89. The sale of any real estate at delinquent land sale shall not be held invalid on account of its having been charged on the duplicate in any other name than that of the rightful owner.

85. Lands not bid for to be forfeited to the State. Ib.
86. Auditor to keep record of forfeited lands, and send copy to State Auditor. Ib., 83.
87. Delinquent lands sold to be entered in lists in name of purchaser. Ib.
* 88. See provisions of Sec., 119.
89. Sales of land not invalid though not entered in owner's name. Ib.

SEC. 90. If any certificate given at any sale of delinquent lands shall be lost or destroyed, upon satisfactory proof thereof to the proper County Auditor, he shall make to the party entitled thereto a deed for the real estate so sold, precisely as if such certificate of purchase had not been lost or destroyed.

SEC. 91. The County Auditor shall enter on his records of delinquent land sales, a minute of all deeds by him made in pursuance of any sales of real estate therein recorded, naming the party in whose name the same stood charged on the duplicate at the time of the sale, the date of the sale, the name of the purchaser, a brief desciption of the real estate, the quantity sold, the amount for which the same was sold, the date of the deed, and the name of the grantee therein; also, a minute of all redemptions of any real estate so sold before any deed made therefor, with the date of redemption, and the name of the party redeeming.

SEC. 92. The purchaser of any interest of any tenant in common, in any real estate, at any sale of delinquent lands, shall, on obtaining a deed therefor from the County Auditor, hold the same with the other owners, as a tenant in common, and be entitled to a partition of the estate so held in common, as other tenants in common.

SEC. 93. In the case of all lands purchased on behalf of the State, under the provisions of Section eighteen (18) of this Chapter, the County Treasurer shall, in the name of the State, enter upon and take possession of the same, and may lease the same in parcels not exceeding forty acres each, to any person or persons who are citizens of the State, and who may desire to cultivate the same; said leases to be in such form as shall be prescribed by the Attorney General, and subject to all the rights of redemption in such case provided for by law. Said lands, may be leased for a sum certain, not less than ten per cent. of the cost thereof, or for such share of the crops as shall be reasonable and just.

SEC. 94. Any person who shall have rented lands under the provisions of the foregoing Section, entered upon and fulfilled the conditions of the lease, shall, at the expiration of the time during which said lands were redeemable by the original owner, be deemed to have acquired a right of pre-emption in the same.

SEC. 95. After the time allowed for the redemption of any lands purchased by the County Treasurer, on behalf of the State on account of taxes, shall have passed, the said Treasurer shall cause the same, or any portion thereof, to be subdivided and sold, in parcels not exceeding forty acres each, at public sale, after giving sixty days' notice thereof, and issue a certificate therefor. Said lands shall be sold to the highest bidder, and on terms most advantageous to the revenue of the State: *Provided*, The party or parties who may have gained a right of pre-emption shall have the right to purchase the same at a sum not less than the cost thereof to the State, one-fourth of the purchase money to be paid down, and the balance, with interest, in three annual installments.

SEC. 96. After the purchase money shall have been fully paid, together with the interest thereon, the Governor is authorized and required to cause a patent or patents to be issued to any such person as may be the *bona fide* purchaser, owner, assignee

90. Auditor to make deed though certificate may be lost. Ib.

91. To keep minute of all deeds made, and of redemption. Ib.

92. Regarding tenants in common. Ib., 84.

93. Lands forfeited to State to be leased; Attorney General to prescribe form of lease. 14, Stat 98.

94. Right of pre-emption may be acquired by lessee. Ib.

95. Lands not redeemed to be sold; Times of sale. Ib.

or transferee of such lands or tenements, under and by virtue of any certificate of sale, or under and by virtue of any assignment or transfer of such certificate: *Provided*, That in case of an assignment or transfer of a certificate of sale, the person applying for such patent shall give satisfactory proof to the County Treasurer of the preceding transfers and assignments.

SEC. 97. The County Treasurer shall, on or before the first day of November in each year, report to the State Treasurer all lands leased under this Chapter, giving the names of the lessees and the terms of each lease, and the names of the original owners of such lands. Also, a report of all lands sold, and of the certificates of sale issued, and the terms of each sale. All moneys accruing to the State, under the provisions of this Chapter, shall be paid over and accounted for in the same manner as money received for taxes.

SEC. 98. It shall be the duty of each owner of lands, and of any new structures thereon which shall not have been appraised for taxation, to list the same for taxation with the County Auditor of the County in which they may be situated, on or before the last day of August next after the same shall become subject to taxation.

SEC. 99. When any real estate shall be sold under any writ, order or proceedings in any Court, the Court shall, on motion of any person interested in the real estate, or in the purchase or proceeds of the sale thereof, order all taxes, assessments and penalties charged thereon to be paid out of the proceeds of such sale, as of lien prior to all others.

SEC. 100. All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged; and such taxes, assessments and penalties shall be a first lien against the estate of all deceased persons; against the estate of bankrupts and insolvents; against the assets and estates of all persons making assignments for the benefit of creditors; against all property held in trust; against all personal property held on chattel mortgage, or in pledge; against all personal property sold for the purpose of avoiding the payment of taxes; against all personal property held by parties in fraud of creditors; against all stocks of goods, implements machinery and tools of merchants or manufacturers, as against purchasers of the whole of such stocks upon which the taxes have not been paid; and such taxes shall be first paid out of the assets of any estates of deceased persons, or held in trust as assignee or trustee, as aforesaid, or proceeds of any property held on execution or attachment; and the County Treasurer may proceed, by action at law, against the parties holding property otherwise, as above mentioned; or, if he can obtain the possession of the property, he may distrain and sell the same precisely as if the same had not been sold, mortgaged or pledged, as above mentioned.

SEC. 101. If any action be prosecuted against the County Auditor or County Treasurer, for performing, or attempting to perform, any duty enjoined upon them by Chapters XII and XIII, the result of which action will affect the interests of the County, if decided in favor of the plaintiff in such action, such Auditor or Treasurer shall be allowed and paid out of the County Treasury reasonable counsel fees

96. Patents to be issued: Proviso. Ib.
97. Treasurer to make annual report of lands leased.
98. When new structures shall be listed. Ib., 64, 621.
99. Taxes, assessments and penalties to have first lien. Ib.
100. To be first liens on estates of deceased persons, and bankrupts. Ib., 2, Bay., 244.
101. Regarding suits against Auditor or Treasurer. Ib., 65.

and other expenses, for defending such action, and the amount of any damages and costs adjudged against him; which fees, expenses, damages and costs, shall be apportioned rateably by the County Auditor among all the parties, except the State, interested in the revenue involved in said action; and if the State be interested in the revenue in said action, the County Auditor shall, immediately upon the commencement of said action, inform the Auditor of State of its commencement, and of the legal cause thereof, and the Auditor of State shall submit the same to the Attorney General, who shall defend such action for and on behalf of the State; and if only some local levy made by town or other municipal authorities be involved in such suit, such town or other municipal authority shall employ and pay counsel, and all damages and costs recovered in such action; and the County Auditor or Treasurer, or both, if both be sued, may, by cross-petition, answer, or motion in Court, cause the town trustees or other local or municipal authorities interested in the revenue involved in the action to be made parties thereto, (if not already parties,) and the Court in which such action may be pending shall cause trustees, or other local or municipal authorities, to be made parties to such action, and render judgment for any damages and costs which may be found in favor of the plaintiff against said trustees or other municipal or local authorities, and not against said Auditor or Treasurer.

SEC. 102. Each County Auditor shall answer, in writing, all inquiries propounded to him by the Auditor of State, touching the condition and value of the real estate of his County, and changes made in the valuations thereof in the different towns, villages, cities, wards and other districts; also, as to the valuations of the different classes of personal property for taxation, as compared with their market value, and in relation to any and all matters which the Auditor of State may deem of interest to the public, or of value to him in the discharge of his duties as Auditor of State.

SEC. 103. Each member of the State Board of Equalization, except the State officers on said Board, shall receive three dollars per day for each day he shall be employed in performing the duties enjoined upon him, and ten cents per mile for traveling to, and the same for returning from the seat of Government, to be computed by the most usually traveled route, and paid out of the State Treasury, on the warrant of the Auditor of State.

SEC. 104. Each member of the City Boards of Equalization shall receive for his services, for each day actually employed in performing the duties enjoined upon him, three dollars per day, to be paid out of the County Treasury, on the warrant of the County Auditor.

SEC. 105. Every County Auditor or County Treasurer who shall, in any case refuse or knowingly neglect to perform any duty enjoined on him, or who shall consent to, or connive at, any evasion or violation of any of the provisions of Chapters XII and XIII, whereby anything required to be done by any of said provisions shall be hindered or prevented, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the valuation thereof be entered on the return for taxation, or on the duplicate, at less than its true value, estimated according to the rules prescribed, or any tax, assessment or penalty, shall not be collected, shall be deemed guilty of an offence, and upon indictment and conviction thereof, shall be fined in any sum not exceeding two thousand dollars, and imprisoned in the Penitentiary for a term not less than one nor more than three years.

102. County Auditor to furnish State Auditor any required information.
103. Pay of State Board of Equalization. Ib., 66.
104. Pay of City Board of Equalization. Ib.
105. Punishment of Auditor or Treasurer for neglect of duty. Ib., 66, 623.

SEC. 106. The collection of taxes shall not be stayed or prevented by any injunction, writ or order, issued by any Court or Judge thereof.

SEC. 107. In any action or proceeding against any County Treasurer in this State, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected as taxes, assessments or penalties, unless the party bringing such action or proceeding shall make it appear that a notice in writing of the claim on which such suit may be brought was given to said Treasurer in pursuance of the eighth (8) Section of this Chapter, and unless it shall be made to appear that said Treasurer has proceeded contrary to the provisions of this Chapter, the amount recovered in such suit shall not exceed the value of the property or money aforesaid.

SEC. 108. It shall be the duty of the Attorney General of the State to defend any suit or proceeding against any County Treasurer, or other officer, who shall be sued for moneys collected, or property levied on or sold on account of any tax, when the State Auditor shall have ordered such Collector to proceed in the collection of any such tax, after notice as aforesaid, or suit brought; and any judgment against such Treasurer or other officer, finally recovered, shall be paid in the manner provided in Section sixty-three (63) of this Chapter.

SEC. 109. All past due and unpaid taxes, State or County, laid or levied upon or by authority of the late Provisional Government, or under or by virtue of military orders, shall be paid and collected by the County Treasurer, to whom the late Tax Collectors shall turn over all moneys, books, tax executions, papers and other property, now in their possession, in the same manner as is provided in this Chapter.

SEC. 110. Fees for the actual collection of taxes only shall be allowed, and no costs or expenses shall be paid by the County or State on any executions issued, or hereafter to be issued, and returned *nulla bona*.

SEC. 111. Any County Treasurer who shall neglect to pay over to the Treasurer the amount in his hands belonging to the State, or for which he has made himself liable, as required by law, shall be liable to be committed to jail by a warrant from the Treasurer, which warrant shall be directed to all the Sheriffs of the State, who shall be bound in their several Counties to yield strict obedience to the same, under penalty of liability for neglect of duty; and such County Treasurer shall remain in strict custody until he shall have rendered a full account, and paid over the taxes for which he is accountable.

SEC. 112. If any County Treasurer shall refuse or neglect to pay the taxes received by him within the time required by law, the Treasurer shall, in addition to the coercive power which he now possesses, charge the County Treasurer with interest, at the rate of five per cent. per month, from the time he ought to have paid the taxes, to the time of such settlement.

SEC. 113. The Treasurer shall report to the General Assembly, at its annual session, every instance of default in the County Treasurers, and state particularly the means which he has made use of against such defaulters, so that the General

106. Collection of taxes not to be stayed, or enjoined. Gen., Stat., 88.
107. Actions for recovery of taxes illegally assessed. 14. Stat..367.
108. Attorney General to defend County Treasurer or other officers when. Ib.
109. Taxes levied by Provisional Government, to be collected by Treasurer. Io., 309.
110. Fees for collection, to be paid, but no *nulla bona* costs. Ib.
111. Defaulting Treasurer to be committed to Jail. 5, Stat., 54. Gen. Stat., 111.
112. Penalty attaching to default. 11, Stat., 247.

Assembly may be fully informed of any omission of duty, wheresoever and by whomsoever, in the punctual and due collection of taxes; he shall instruct the Attorney General and Solicitors to proceed against all such defaulters, as soon as such defaults shall occur; and it shall be the indispensable duty of the Treasurer, to enforce all legal means against defaulting County Treasurers; in failure whereof, he shall be held to make good any loss which the State may sustain thereby, and be, moreover, liable to be deemed guilty of a violation of his official duty.

SEC. 114. The County Commissioners shall assess all taxes for County purposes upon the then last State valuation; and for this purpose shall, on or before the first day of January in each year, obtain from the Auditor of the County (who is authorized and required to furnish the same) a certified copy of the duplicate, and shall, on or before the fifteenth day thereafter, pursuant to authority given by the General Assembly, make out and deliver to the County Treasurer, with their warrant to collect, a tax bill for County purposes. Said tax bill and warrant shall be signed by the County Commissioners, or a majority of them, sealed with their seal, and certified to by their Clerk. Said tax bill and warrant shall be the Treasurer's sufficient authority, and he shall proceed thereon to collect the taxes therein laid, in the same manner as provided by law for the collection of State taxes.

SEC. 115. The several County Treasurers shall retain all the poll tax collected in their respective Counties; and it is hereby made the duty of the said County Treasurers, in collecting the poll tax, to keep an account of the exact amount of said tax collected in each School District in his County; and the poll tax collected therein shall be expended for school purposes in the School District from which it was collected; and any violation of this Section by the County Treasurer shall constitute, and is hereby declared, a misdemeanor; and, on conviction thereof, the said County Treasurer shall pay a fine not less than five hundred (500) dollars, nor more than five thousand (5,000) dollars, to be used for school purposes in the County suffering from such violation; or imprisonment, in the discretion of the Court.

SEC. 116. The County Treasurer shall pay over all moneys by him received, which shall have been assessed by virtue of the vote of any District meeting, as herein provided for, in the County in which such District is situated, on the order of the Clerk of the Board of Trustees of said District, countersigned by the County School Commissioner, to be used for the purpose directed by the District meeting so held. Said money shall be assessed and collected at the time, and in the manner that County taxes are assessed and collected: *Provided*, That in School Districts where there are less than one hundred children between the ages of six and sixteen, the inhabitants may raise such a sum, per child, as will be sufficient to maintain their schools.

SEC. 117. If any bank or banking association shall fail to make out and furnish to the County Auditor the statement required by the 35th Section of this Chapter, within the time required herein, it shall be the duty of the Auditor to examine the books of said bank or banking association; also, to examine any officer or agent thereof, under oath, together with such other persons as he may deem proper, and make out the statement required by said 35th Section, and enter the value of said shares on the duplicate for taxation. Any bank officer failing to make out and fur-

113. Defaulting Treasurer to be reported to General Assembly. 5, Stat., 411, 455.
114. Taxes to be assessed upon last State valuation. 14, Stat., 274.
115. Treasurer to retain poll tax for school purposes. Ib., 559.
116. School moneys to be held by County Treasurer. Gen. Stat., 233.
117. County Auditor may examine bank books and papers. 14, Stat., 39.

nish to the County Auditor the statement, or wilfully making a false statement, as required in the 35th Section of this Chapter, shall be liable to a fine not exceeding one hundred dollars, together with all costs and other expenses incurred by the Auditor, or other proper officer, in obtaining such statement as aforesaid.

SEC. 118. *Be it enacted*: That Section 108 of the Act entitled "An Act providing for the assessment and taxation of property," passed September 15, 1868, be and the same is hereby, altered and amended, by striking out all the proviso, after the words "delinquent land sale," in the twelfth line; that Section 114 of the same Act be amended by striking out the words "two years," and inserting, in lieu thereof, the words "ninety days;" that Section 116 of the same Act be, and the same is hereby, amended by striking out the words "two years," wherever the same appears therein, and insert, in lieu thereof, the words "ninety days," that Section 117 of the same Act be, and the same is hereby, amended by striking out the words one year," wherever the same may appear therein, and insert, in lieu thereof, the words "thirty days;" and by striking out the words "two years," wherever the same may appear therein, and insert, the words "ninety days," in lieu thereof; that Section 123 of said Act be, and the same is hereby, amended by striking out the words "two years," wherever the same may occur therein, and insert, in lieu thereof, the words "ninety days."

SEC. 119. That so much of the Act entitled "An Act to further amend an Act entitled 'An Act providing for the assessment and taxation of property,'" passed March 8, 1871, as provides that all deeds of conveyance of real estate shall be placed on record in the office of the County Auditor before the same can be placed on record in the office of the Register of Mesne Conveyance, be, and the same is hereby, amended by adding the following, viz: And for each and every violation of this provision by a Clerk of Court or Register of Mesne Conveyance, he shall, upon conviction, before any Court of competent jurisdiction, be fined in a sum of not less than five dollars, nor more than twenty dollars, and the costs of the action; one-half of said fine to be paid into the County Treasury for the benefit of the County, and the other half to be paid to the County Auditor.

SEC. 120. The lands which have been forfeited to the State under the provisions of the Act providing for the assessment and taxation of property, passed September 15, 1868, and other Acts amendatory thereto, shall be advertised by the County Auditor, in manner provided by Section 107 of said Act, and sold by the County Treasurer to the highest bidder; and the County Auditor shall execute a "warranty deed" to the purchaser. The proceeds of the sale, after deducting fees allowed by law, and paying the County the amount of taxes and penalties due from such land, shall be forwarded to the State Treasurer by the County Treasurer, and shall be credited to the County from which it is received on account of the forfeited lands.

SEC. 121. That all lands and real estate within this State, whereupon, or in respect whereof, any sum of money remains due or payable after the sale provided for in Section 15, Chapter XIII, Title III, of General Statues, or which are liable to be sold for, or on account of, any tax laid by or under the authority of this State for State or County purposes, in accordance with the provisions of either of the

118. Time for redemption changed. 15, Stat., 163.

119. Penalty if Register records conveyance before being entered in Auditor's office. Ib.

120. Forfeited lands to be sold and warranty deeds given. Ib., 164.

121. Time for sale of forfeited lands; Other provisions. Ib, 164.

several Acts for the purpose of assessing and levying taxes for the support of the government of the State and of the several Counties thereof, passed in the years 1868, 1869, 1870 and 1871, shall be exposed to sale, and sold for the payment of such taxes, and all penalties, costs and charges thereon accrued, on the first Monday in June, 1872, and, from day to day thereafter, Sundays only excepted, until the whole thereof shall be sold, at the place or places, on the terms and in the manner hereinafter provided; such sale shall be by the County Treasurer of each County, at the County seat, who shall expose and offer the said lands at public sale, to be sold and conveyed in fee simple, without any right of redemption, for the payment thereof. If no person shall, at said sale, offer to purchase or take a less quantity of the lands so charged and offered than the whole thereof, at and for the amount so charged for the taxes, penalties, costs and charges, the said County Treasurer shall declare that the State is the purchaser thereof, at and for the amount so charged; and, thereupon, the State shall become invested in fee simple with the title to said lands, and the appurtenances and all the improvements thereon. If, at said sale, any person shall publicly offer to take a less portion than the whole of said lands, for the said taxes, penalties, costs and charges, then the said lands shall be sold to such person as shall offer to take the smallest portion thereof, and pay the same; and, upon the payment of the amount so due to said County Treasurer, said officer shall execute and deliver to the said purchaser a certificate, setting forth the fact of such purchase, and the payment of the amount bid; and, thereupon, the said purchaser shall be entitled to a grant from the State of the undivided right, title or interest, in fee simple, without redemption, in and to all the lands so sold and all lands belonging to any person or persons or corporation against whom such tax was levied and assessed, equal to the proportion which the amount bid holds to the whole of said lands so purchased, and the purchaser shall be entitled to demand partition thereof according to law; and, on such partition the said purchaser shall be entitled to a proportional share and interest in all improvements thereon. In addition to the sums now assessed and chargeable upon said lands, there shall be added, at the time of said sale, five per centum of the amount of said taxes, penalties, costs and charges, which said sum is hereby appropriated for the payment of the expenses of said sale, and the collection of the moneys thereon. One-half of one per cent. to be for the use of the County, and the balance to be paid into the State Treasury. If any person to whom such lands shall be struck off shall fail forthwith to pay the amount bid therefor, said County Treasurer shall immediately expose and offer such lands for re-sale, as if no such previous sale had taken place. The County Treasurer shall make weekly remittances of all funds received, according to the provisions of the Act, to the State Treasurer, and shall forward monthly accounts for said funds to the State Treasurer.

SEC. 122. It shall be the duty of the Governor to cause this Act to be published in such manner as shall, in his judgment, be requisite to give full information thereof; the expenses of such publication to be paid or reimbursed out of the fund authorized hereby to be charged as the expenses of said sale.

SEC. 123. It shall be the duty of each County Auditor of each County to exhibit the tax books thereof, showing all delinquent taxes herein provided for, for sixty days next preceding such sale, and all persons shall be entitled to inspect the same, between the hours of 9 o'clock A. M. and 12 M., of each day, Sunday ex-

122. Act to be published for full information. Ib.

123. Duty of County Auditor in the premises. Ib., 166.

cepted; and it shall be his duty to attend said sale, with the said tax books, and to furnish to said County Treasurer, and all persons requiring the same, such information as the records of his office may afford relative to the matter involved in said sale; and, upon the delivery of the Treasurer's certificate of sale, to execute a deed in accordance with Section 33, Chapter XIII, Title III, of the General Statutes of South Carolina.

SEC. 124. *Be it enacted:* That where the writ of *habeas corpus* has been suspended by the President of the United States, there shall be levied and collected, at the same time and in the same manner that all other taxes are collected, a special tax of one-half (½) mill on the dollar, of the assessed value of all the taxable property of each and every of said Counties, the proceeds of which tax shall be paid into the County Treasury in said Counties, respectively; and shall constitute a pension fund for the support of the indigent widows and orphans of those persons who have been killed in said Counties because of their political opinions: *Provided*, That if in any County said levy of one-half (½) mill on the dollar shall be more than sufficient for the support of the widows and orphans aforesaid in said County, then said excess shall be applied to the school fund, to be disbursed according to law.

SEC. 125. That each of such destitute or indigent widows or orphans, on satisfactory proof (by not less than two disinterested witnesses) furnished to the County Treasurer of his or her County, shall receive an allowance or pension of the amount as follows, to wit: For each widow, ten dollars per month; for each orphan child, under the age of fifteen years, six dollars per month, payable on the first day of each and every month by the County Treasurer, such allowance to be continued during the widowhood of such widow, or to such orphan child until he or she shall have attained the age of fifteen years. The County Treasurers of said Counties shall report to the next General Assembly a detailed statement as to how far the provisions of this Act have been carried into execution.

124. Special taxes to be levied and collected in certain Counties. Ib., 206.
125. To whom distributed; rates of distribution. Ib., 207.

CHAPTER XIV.

OF THE

FEES, AND SALARIES OF COUNTY OFFICERS.

CLERK'S FEES.

The Clerks of Courts of Common Pleas and General Sessions shall receive, for services, the following fees:

For signing and sealing subpœna writ, State cases	$ 50
For administering oath	25
For taking and filing bonds in attatchment and other cases	1 50
For signing and sealing commission to examine witness	1 00
For recording plat under order of Court	1 00
For rule of survey	1 00
For each official certificate under seal	50
Issuing writ of attatchment for contempt, or other special writ	1 50
For signing and sealing writ of *hab. fac. possessionem*	1 00
Receiving and paying over money officially, under three hundred dollars	2 per cent.
over that amount	1 per cent.
On bill *nol. pros.*, before given out	2 00
On bill thrown out by Grand Jury, or found, and *nol. pros.*, abated, discontinued or struck off	3 00
On bill found and verdict by petit jury	4 00
For issuing bench warrant	2 00
For issuing execution in Sessions	2 00
For signing and sealing writ of *habeas corpus*	3 00
Issuing warrants, taking recognizance or other services in Sessions, the same fees as allowed to Trial Justices	
Each writ of *venire facias*, including all services incident to summoning jurors	2 50
Perparing and issuing certificates for grand and petit jurors and Constables, and furnishing return to County Commissioners, for each week of every term of the Court	10 00
Furnishing advertisement in case of escheat, exclusive of printer's bill, and recording proceedings thereon	5 00
For advertising and giving notice to Commissioners of Elections, in case of vacancy in office, each	10 00
For license to an attorney, all incidental services included	5 00
Filing and entering notice of alien's intention to become a citizen	1 00

Filing and recording report of alien,.....	$1 00
Administering oath of intention,	1 00
Filing and entering application to become a citizen and administering oath,	2 00
For giving certificate of citizenship,	1 00
Taking renunciation of dower or inheritance,	2 00
For official record of estray, and filing papers,	1 50
Every search for a paper,	15
Every search, with certificates,	50
Swearing Trial Justice or Constable in office, and certificate thereof, and taking bonds,	2 00
For recording bonds of County officers and certifying the same,	1 50
For recording proceedings in each case as required bylaw,	1 50
All orders for bastardy and taking recognizance,	1 00
For filing petition and signing writ *de lunatico inquirendo*,	1 00
For filing inventory and order of discharge of debtor,	50
For granting rules against creditors,	50
For every probate in writing,	25
For signing *dedimus potestatem*,	2 00
For official certificate to exemplification of record,	1 00
For official certificate in case requiring seal,	50
On every trial, from the party bringing it on,	2 00
On filing transcript,	25
On entering judgment,	50
Signing and sealing each execution and renewal,	50
Copy papers, per copy sheet of one hundred words,	25
For recording and copying deeds or other papers, per copy sheet of one hundred words,	25
For every certificate on deeds or other papers,	25
Recording certificate of amount due on liens, &c., the same fees as for recording mortgages, of equal length,	
For hearing and trying applications for relief of persons confined on civil process,	2 00
If jury is required, issuing summons, and charging same, in addition,	2 00
For taking confession of judgment, with all incidental services,	5 00
For taking recognizance under provisions of Sec. 12 Chapter 138, Gen. Stat.	1 00
In every action in which issue is now joined, and the case is on the calendar of the Court of Common Pleas in the 1st and 5th Circuits, the party who shall have filed such note of issue, as a condition precedent to bringing such action to trial shall pay the Clerk,	3 00
In every action on either side of said Court commenced after the passage of this act the party who shall file first note of issue of fact shall as a condition precedent to such filing pay to the Clerk, to be accounted for by him to County Treasurer monthly, as a fund for payment of Stenographers,	3 00

COMMISSIONERS OF LOCATION.

For recording application and granting warrant under hand and seal.....	$ 75
For recording plat and sending to Sec. State.....	1 75
For each copy of plat and certificate.....	1 25

SHERIFF'S FEES.

The fees of Sheriffs shall be as follows:

For entering every writ, process, warrant or execution, and making endorsements thereon,	50
For serving every writ or summons besides mileage,	1 00
For bond in any case,	1 50
For commitment and release, each,	50
For serving each *venire* for Grand Jury	10 00
For serving each *venire* for Petit Jury,	20 00
For serving each bench or other warrant in the sessions, or attachment for, contempt of Court, beside mileage, each,	1 00
Search for person or goods not found and returned on the execution *non est inventus* or *nulla bona*, besides mileage,	1 00
Levy, attachment or other execution, besides mileage,	1 50
Dieting persons, per day,	40
Executing convict, including all charges for burial and other expenses,	25 00
Bringing up prisoner under *habeas corpus*, to be paid by the prisoner, if able, (if not, by the County,) besides mileage,	2 00
Conveying prisoner from one place to another, besides all necessary expenses, and returning, per mile,	10
Each guard for Sheriff, in conveying prisoner, per day,	2 00
Commissions on all moneys collected by him, if under $300,	2 per cent.
If over that sum, on first $300,	2 per cent.
On balance,	1 per cent
On all moneys paid out of office on all executions lodged; ½ of,	1 per cent.
Advertising defendant's property, in addition to printer's bill,	1 00
Drawing deed or mortgage,	3 00
Drawing bill sale of,	1 50
Each notice served on set of Commissioners of Election, besides mileage,	1 50
In case of ejectment, and ejecting tenants or others, besides mileage,	5 00
Summoning Coroner's jury and witnesses, to be paid by the County,	5 00
For executing a writ of *habere facias possessionem*, besides mileage,	1 00
Mileage from Court House to defendant's or witness' residence, or place where found, going, but not returning, per mile,	05
Transferring money, bonds or other securities for money to party,	½ of 1 per cent.
For summoning freeholders to try suggestion of fraud under provisions of Sections 21, and 23, of Chapter 123 Gen. Stat.,	5 00

CORONER.

The Coroner shall be entitled to the following fees:

For every inquisition,	10 00
For mileage going and returning, per mile,	05
For each commitment,	50
For each recognizance,	75
For each body disinterred,	3 00
Recording proceedings in each inquisition, in his book, per copy sheet one hundred words,	15
Performing duty of Sheriff, same fees as are allowed to Sheriff for like service.	

TRIAL JUSTICES.

The fees which Trial Justices shall be authorized to receive by law shall be as follows:

Oath and warrant, in any criminal case	$ 50
Each recognizance,	50
Commitment and release, each,	50
Administering and certifying oath in writing, other than above,	50
Issuing writ of *habeas corpus* to two Justices jointly,	2 00
Issuing summons and copy for defendant in civil cases,	60
Issuing summons for witness in any civil case,	50
Taking examination of witness in writing in any case, as prescribed by law,	1 00
For giving judgment on hearing litigated case,	50
For giving judgment in case not defended,	50
For issuing execution, or renewal of the same,	50
Report of case and taking bond to appeal,	1 50
For issuing attachment returnable to Court or Justice including all notices,	1 50
For filing return of garnishee, and order thereon,	25
For proceedings in case of ejectment,	5 00
For approval of indentures of apprentices or servants,	1 00
For procedings on Coroner's inquest, as prescribed by law,	10 00
For proceedings on estray of horse or mule,	1 00
For proceedings on all other estrays,	50
For taking and certifying renunciation of dower or inheritance,	2 00
For granting order for special bail,	1 00
For trial of any criminal case or misdemeanor,	3 00
For administering oath,	25
For administering oath on affidavit,	50
Proceedings in case of bastardy, inclusive,	5 00
For oath and warrant in any criminal case,	50
Each recognizance,	50
Commitment and release, each,	50
Administering and certifying oath, other than above,	50

CONSTABLES.

The fees of Constables shall be as follows:

For summoning witness in civil case	$ 50
For serving summons, rule or notice in any civil case,	50
For serving attachment on each person,	1 00
For levying execution, posting advertisements of sale, and paying over proceeds, besides commission of three per cent. on amount collected, to be paid by the defendant in execution,	50
For every day in search of stolen goods, to be paid by complainant,	2 00
For serving a warrant in any State case,	1 00
For selling an estray, five per centum of the proceeds, and, in all cases, for actual and necessary travel one way, to be certified by the officer on the back of the process, in writing, per mile,	05
For all necessary service in case of ejectment, as well before as after judgment,	5 00
For summoning Coroner's jury, and witnesses, to be paid by the County,	3 00
For transportation of prisoners to County jail, per mile, to be paid by the County,	10

JUDGE OF PROBATE.

Judges of Probate shall be entitled to charge the following fees for the services required of them by law:

For petition for letters of administration &c.,	$2 00
For citation,	1 00
For qualifying executor, administrator or guardian, issuing letters and recording the same,	4 00
For taking bond of administrator or guardian, and recording the same,	2 50
For issuing warrant of appraisement,	1 00
For proving will in common form,	1 00
For proving will in solemn form,	10 00
For recording wills and certificates, per copy sheet of one hundred words, each figure counting a word,	25
For filing and entering renunciation of executor,	1 00
For *dedimus potestatem* to prove will or qualify executor,	2 50
For recording inventories, appraisements and sales, per copy sheet of one hundred words, each figure a word,	25
For receiving, examining and filing annual returns,	2 00
For first and final returns, each,	3 50
For recording returns, per copy sheet of one hundred words,	25
Making order for sale of personal property,	1 50
Hearing and filing petition for guardians, and appointment,	5 00
Entering *caveat* and withdrawing the same,	1 00
For hearing litigated cases,	5 00
Issuing summons, for each witness,	50
Qualifying and examination of each,	25
For proceedings in partition of real estate worth less than $1,000,	15 00
For proceedings in partition of real estate worth more than $1,000,	30 00
For appointing guardians *ad litem*,	3 00
Commissions on all moneys received and paid out, on first $300,	2 per cent.
On all sums over $300,	1 per cent.
For search for each paper,	15
For certificate and seal,	50
For copying papers on file in office, per copy sheet, 100 words,	25
For final discharge of executor, administrator or guardian,	2 00
For proceedings in dower, inclusive of all charges,	20 00
For proceedings in lunacy, inclusive,	5 00

APPRAISERS AND REFEREES.

Appraisers to appraise the estate of deceased persons, per day,	$1 00
Appraisers to set out homestead, per day,	2 00
Freeholders summoned to survey rice lands, as provided by Chapter XLIX, Gen. Stat., per day,	1 50
For going to and returning from the place of meeting, per mile,	05
For every day spent in the business of a reference,	3 00

DEPUTY SURVEYORS.

For surveying land, per acre,	$ 01
For making out a fair plat, certifying, signing and returning the same,	2 14
For running old lines for any person, or between parties, or by order of Court, while they are on the survey, per day,	3 00

JURORS AND WITNESSES.

For attendance at Court as a grand of petit juror, per day.....1	50
For mileage, going and returning, per mile,	05
For witness in a civil case, per day, 1	00
For coming to Court and for returning, besides ferriages, to be paid by the party summoning such witness, per mile,	05
For attendance at Court as a witness in a criminal case, per day, 1	50
For mileage, going andreturning, to be paid by the County wherein the offence shall have been committed, per mile,	05

AUDITOR.

For every entry and endorsement of any deed on conveyance of real property recorded in his office, $	25
For making warranty deed of land sold, 2	00
For salary, payable quarterly at State Treasury, per annum, 1,000	00

TREASURER.

Five per centum on all collections, *provided*: same do not exceed, per annum, $2,500	00
For issuing Tax Execution, five per cent. on amount,	
For mileage in making levy, per mile,	06

NOTARIES PUBLIC.

Notaries Public shall be entitled to receive the following fees :

For taking deposition and swearing witness, per copy sheet, $	25
For every protest, 2	75
For a duplicate of deposition, protest and certificate, per copy sheet,	15
For each attendance on any person to prove any matter or thing, and certifying the same, 1	00
For every notarial certificate, with seal affixed, 1	00
For administering an oath,	25
For administering oath on affidavit,	50
For taking renunciation of dower or inheritance, 2	00

SOLICITOR.

Salary per annum, payable quarterly at State Treasury, $1,000	00
On every bill of indictment found and tried, 10	00
On every bill found and *nolle pros.* entered, 7	50
For every Rule entered on Contingent Docket, 7	50

The Solicitor has discretion in the settlement of cases of misdemeanor, and may decline to give out bills where public justice may be otherwise subserved.

PLAINTIFF'S COSTS.

For all proceedings before notice of trial, in actions where judgment for failure to answer can be taken without application to the Court, $15	00
Where judgment can only be taken on such application, 25	00
For all proceedings after notice of and before trial, 15	00
For each additional defendant served with process, not exceeding ten, 2	00
For each necessary defendant in excess of that number, served with process, 1	00

For trial of issue of law	$20 00
For every trial of issue of fact,	30 00
When trial necessarily occupies more than two days, additional costs of,	10 00
For all proceedings after granting of and before new trial,	25 00
Taking deposition of a witness conditionally, or to perpetuate testimony,	10 00
Drawing interrogatories for commission,	10 00
Attending examination of a party before trial,	10 00
Making and serving a case, or a case containing exceptions,	20 00
When the case necessarily contains more than fifty folios in addition thereto,	10 00
Making and serving amendments thereto,	10 00
Appointment of guardian of infant defendant,	10 00
(NOTE.—No more than $10 allowed for appointment of guardian in any one action.)	
Procuring order of injunction,	10 00
Appeal to Supreme Court, before argument,	30 00
Argument,	60 00
N. B.—When judgment is affirmed, the Court may, in its discretion, award damages for the delay, not exceeding ten per cent. on the amount of the judgment rendered,	
Preparing and seving a case, or a case containing exceptions, in appeal to Supreme Court,	20 00
For every term, not exceeding five, at which the case is necessarily on the calendar,	10 00
For every term, not exceeding ten, excluding term at which argued in Supreme Court,	10 00
Upon recovery of judgment, in actions for partition of real property, foreclosure of mortgage, or in which warrant of attachment is issued, or adjudication upon a will, or other instument in writing, or to compel the determination of claims to real property, for any sum exceeding $200.	10 per cent.
For additional amount not exceeding $400, an additional sum of,	5 per cent.
For additional amount not exceeding $1,000, an additional sum of,	2 per cent.

DEFENDANT'S COSTS.

For proceedings before notice of trial,	$10 00
For proceedings after notice and before trial,	15 00
Trial of issue of law,	20 00
Trial of every issue of fact,	30 00
If trial occupy more than two days necessarily, in addition thereto,	10 00
Proceedings after granting of and before new trial,	25 00
Taking deposition of a witness conditionally, or to perpetuate testimony,	10 00
Drawing interrogations for commission,	10 00
Attending examination of a party before trial,	10 00
Making and serving a case, or a case containing exceptions,	20 00
When the case contains more than 50 folios necessarily, in addition thereto,	10 00
Making and serving amendments thereto,	10 00
On appeal to Supreme Court, before argument,	30 00
Argument,	60 00

N. B.—When judgment is affirmed, the court may, in its discretion, also award damages for the delay, not exceeding 10 per cent. on the amount of the judgment.

Preparing and serving a case, or a case containing exceptions, in appeals to Supreme Court, 20 00

For every term, not exceeding five, at which the case is necessarily on the calendar, 10 00

For every term, not exceeding ten, inclusive of term at which case is argued in Supreme Court, 10 00

CHAPTER XV.

FORMS FOR USE COUNTY OFFICERS.

ENTRY IN SESSIONS JOURNAL.

1. THE STATE OF SOUTH CAROLINA;
At a Court of General Sessions for the County of begun to be holden at Court-house, on the day of * present the Honorable one of the Circuit Judges of the said State.

2. *If the Clerk is required to certify to a very formal transcript from the Journal.*

(As above to *) and there continued by divers adjournments until the day of aforesaid; present the Honorable, (&c.) On (Saturday) the day of aforesaid, the following order was made and entered [(or entry was made) on the Journal of the said Court, to wit: [*here insert a copy of the entry*].

In witness whereof, I, A. B., Clerk of the said Court, have hereunto set my hand and affixed the seal of the Court, at , this day of one thousand eight hundred and and in the year of the Independence of the United States of America.

3. (*Seal*) H.B., C. C. S.

(As in No. 1. to *) no Judge being present, the Clerk of the said Court opened the Court, and after calling over the roll of Jurors summoned to attend, adjourned until ten o'clock A. M. to-morrow,

Or, no Judge being present, and the Clerk having received due notice that the said Judge will not be able to attend by reason of sickness, the Court was then adjourned by the said Clerk, until the first day of the next Regular Term.

ENTRY IF IT BE EXTRA COURT.

4. THE STATE OF SOUTH CAROLINA.
At an extra Court of General Sessions, for the County of begun to be holden at the Court house in on the day of pursuant to the order of the Honorable the Chief Justice of the Supreme Court of said State, (*a copy of which is hereunder-written,*) the Honorable Circuit Judge was present, presiding.

5. *Proclamation before calling Grand Jury* :

You, good and lawful men who are here returned to inquire for the people of the State of South Carolina, for the body of the County of . answer to your names, each and every of you, and save your fines. (*Then call them by name, one by one in their order*).

6. *Oath of the foreman of the Grand Jury.*

You, as foreman of this Grand inquest, shall diligently inquire, and true presentment make of all such matters and things as shall be given to you in charge; the counsel of the people, of your fellows, and your own, you shall keep secret; you shall present no one from envy, hatred or malice; nor leave any one unpresented for fear, favor, affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding: So help you God.

7. *Oath of Grand Jury.*

The same oath your foreman hath taken on his part, you and each of you shall truly observe, and keep on your part: So help you God.

8. *Proclamation for silence on charging Grand Jury.*

All persons are strictly charged and commanded to keep silence, while this Honorable Court is giving the charge to the Grand Jury, on pain of imprisonment.

9. * *Oath of witness before Grand Jury on bill of Indictment.*

The evidence you shall give to the Grand Jury on this bill of indictment, shall be the truth, the whole truth and nothing but the truth: So help you God.

10. *Oath of witness before Grand Jury on other matters than bills of Indictment.*

The evidence you shall give to the Grand Jury, touching the matters of which you shall be questioned, shall be the truth, the whole truth and nothing but the truth: So help you God.

11. *Proclamation calling Constables.*

Constables of the County of required to be in attendance at this Court; answer to your names, every one of you, on the first call, and save your fines.

12. *Proclamation before calling Petit Jury.*

Hear ye, hear ye, hear ye: You good and lawful men, who are here returned, to try the several issues, to be tried at this Circuit Court of General Sessions, held in and for the County of , answer to your names at the first call, and save your fines.

*The form of every oath administered, may be varied, and instead of laying the right hand upon the Holy Evangelists, as is usual, the witness or juror may hold up his right hand, or may "affirm according to the form of his religious persuasion, &c.," Sec., 3, Stat., 281. A child of tender years is generally questioned by the Court as to his understanding of the nature or import of an oath, before being sworn.

13. *Proclamation for Imposing Fines.*

Hear ye, hear ye, hear ye: The Court have imposed a fine of———dollars upon each of the following persons, for non attendance as grand-jurors, [*or* petit-jurors; *or*, constables,] at this Court: A. B. C. D., of——etc., etc.

14. *Proclamation for persons bound to answer.*

Hear ye, hear ye, hear ye: A. B., come forth and answer to your names, and save yourself, and your bail, or you will forfeit your recognizance.

15. *Proclamation for Bail to produce Principal.*

Hear ye, hear ye, hear ye: C. D. and E. F., bring forth A. B., your principal, whom you have undertaking to have here this day, or you will forfeit your recognizance.

16. *Proclamation for persons to appear on Recognizance.*

Hear ye, hear ye, hear ye: All manner of persons who are bound by recognizance, to prosecute, or prefer any bill of indictment, against any prisoner or other person, let them come forth and prosecute, or they will forfeit their recognizance.

17. *ENTRY IN SESSIONS JOURNAL.

The following named persons are empannelled and duly sworn as a Grand Jury, and the customary charge is delivered by the Judge, (or, if any extraordinary matter be charged, "the following charge was delivered by the presiding Judge," (inserting the same.)

If there be a deficiency in the number of Grand Jurors present, note the names of those in default; and also of any who may be excused for cause shown; and if the Sheriff is required by the Court to summon from the bystanders persons to fill the up the vacancies thus made, note the names of such new jurors.

18. *Bills given out to Grand-Jury.*

The following Bills of Indictment were given out to the Grand Jury.

The State *v.* A. B. Burglary, and Larceny.

The State *v.* H. I. Grand Larceny.

The State *v.* E. F. Murder.

The State *v.* I. J., K. L., and M. P. Riot and Assault.

19. † *Findings of the Grand Jury.*

The Grand Jury returned bills as follows.

The State *v.* A. B. Burglary, and Larceny.

A true bill. T. O. B., Foreman.

The State *v.* H. I. Grand Larceny.

A true bill. T. O. B., Foreman.

The State *v.* E. F. Murder.

A true bill. T. O. B., Foreman.

The State *v.* M. P. Assault with intent to kill, and assault and battery.

A true bill as to the second Count: no bill as to the first.

T. O. B., Foreman.

*The present tense is used in making entries in the journals, as; "The Clerk proceeds to empannel the Jury, who are sworn and charged."

The State *v.* J. K., and L. M. Burglary.
A true bill as to J. K. No bill as to L. M.

T. O. B., Foreman.

20. *Order for bringing up a prisoner, to testify.*

The State *v.* A. B. Murder.

T. S., a witness in behalf of the State, being in jail for want of recognizance with security, it is Ordered, that he be brought into Court, to testify before the Grand Jury. (Signed by the Judge.)

21. *Additional Constables.*

The Court directs the Sheriff to have Constables in attendance upon the Court for this and the next days, and the following are appointed and sworn, viz:

22. ‡*Empannelling of Petit Juries.*

The Grand Jury having retired to their room, the Clerk proceeds to empannel the Petit Juries, and the following are constituted as Jury No. One, to wit: (here insert 12 names) and the following as Jury No. Two: (here insert 12 names) the following named remaining in attendance, as supernumeraries. (here insert supernumeraries.)

23. *Daily Adjournment.*

The Court, at o'clock M. adjourns until to-morrow at o'clock M. (or takes a recess of hours.)

24. *Arraignment—plea of not guilty—day assigned—or guilty, and prisoner remanded.*

The State *v.* A. B. Grand Larceny.

The prisoner is put to the bar and arraigned, and upon his arraignment pleads * not guilty, and for trial puts himself upon God and his Country, and (Tuesday) next is assigned for his trial, *or*, *guilty. After an admonition by the Court, he persists in his confession of guilt, and the plea is entered on the indictment, signed by the prisoner, published by the Clerk, and ordered to be recorded. He is remanded for sentence.

25. *On Bail—arraignment—not guilty—put on Trial—challenges—Jury—adjournment.*

The State *v.* A. B. Grand Larceny.

The accused having been upon bail appears at the bar, and is arraigned; pleads "not guilty," and for trial puts himself upon God and his Country; expresses his readiness to come to trial immediately, and is put upon his trial.

After divers challenges, the following jury is empannelled, viz: 1st. L. M., Foreman. 2nd. F. G., &c. This Jury is charged, and the trial proceeds. After some progress made, the Court adjourns until at o'clock.

†When the Grand Jury return into Court with presentments, the Clerk calls over the names, (in the order in which they were originally empannelled,) and demands of the foreman in their presence. *Have you any bills to present?* The foreman hands the bills to the Clerk, who reads the title of each case, and what the jury have written upon the indictment. It is usual for jury to say *no Bill*; but *not found*, or, *not a true bill*, is the form prescribed in books of criminal law.

‡By the Act of 1871, 14 Stat., 692, the Clerk is directed in preparing the jury lists to arrange the names of jurors alphabetically, "the first twelve on the list to be called the first jury, &c.

26. *Evidence—summing up, and charge of Court to Jury.*

Wednesday, 5th February, 18

The Court assembles pursuant to adjournment.

The State *vs.* A. B., Grand Larceny.

The evidence in this case being closed, and argument submitted, his Honor the Judge sums up, and the Jury retire.

27. ** Verdict of Jury—surrender of bail"—commitment: or discharge.*

The State *vs.* A. B., Grand Larceny.

The Jury returns the following verdict. * Guilty, P. R., Foreman.

His bail, &c., having surrendered the defendant, it is Ordered, that the said A. B. be committed to close custody. (*Or*, * Not guilty, P. R., Foreman. Whereupon it is ordered that the defendant go thereof without a day.)

When a jury has returned with a verdict, the Clerk after calling the names of the Jurors, asks, "Gentlemen, have you agreed upon your verdict?" The Foreman replies, "Yes," and hands up the record. The Clerk reads the title of the case, and the verdict. If the jury be polled, any Juror being called is separately asked whether he agrees to the verdict? Polling a Jury is not the right of any party in either a civil or a criminal case, but is in the discretion of the Court. 1 Mc., 24, 525; 1, Bail, 5.

28. *Misdemeanor—changes in jury—verdict.*

The State *vs.* F. F., Assault and Battery.

Of Jury No. 1, L. M., is excused from sitting, N. O., being kin of defendant is challenged for cause on the part of the State, and P. Q. & R. S., supernumeraries are substituted: T. W. and A. C., are peremptorily challenged by the defendant, and B. D. and C. E., drawn from the supernumeraries in their stead. The Jury then consisting of I. J. O., Foreman, &c., is charged with the trial of the issue, and after hearing the evidence, return the following verdict—"Guilty," and the prisoner is remanded, or committed for sentence: *Or* "Not Guilty," and it is ordered, (as in No. 27,) that defendant go thereof without a day.

29. *Form of arraignment for any felony.*

The accused having been placed in the prisoner's dock, and silence having been commanded by the Sheriff, the Clerk, having the indictment before him, addresses the prisoner by the name used for him in the indictment, [if he have alias names each to be stated, and used.]

"A. B., if you answer to that name, hold up your right hand." (*See note below.*)

The prisoner having raised his hand, or otherwise signified his acknowledgement of the name. ——

Clerk.—"Put down your hand. You stand indicted by the name of A. B., for that you A. B., late of the County of,——"

Here read the whole indictment from "County of" on, changing it from the third to the second person. Where the words, *and so the Jurors aforesaid do on their oaths say* occur towards the end of the count, change them to "*and so you are charged.*" at the beginning of a second or any subsequent count, instead of the words, *and the Jurors aforesaid do further present that he*," say "*and you are further indicted for that you.*"]

Note. At this stage the prisoner's counsel should interfere if a plea of *misnomer*, any other plea in abatement, or any special matter in bar, be contemplated. Inquiry also should then be made if the prisoner stands mute, whether it be *ex visitatione Dei*: or, if it be suggested that he is insane, whether he be *non compos*, &c.

The indictment having been thus read:

CLERK.—"How say you A. B.—are you guilty of the (murder and) felony whereof you stand indicted, or not guilty?"

(If the prisoner shou'd say "guilty," after admonition from the Court, his plea of guilty if persisted in, will, under the direction of the Court, be entered on the Journal, and the prisoner be ordered for sentence.)

PRISONER.—"Not guilty."

CLERK.—"Culprit: How will you be tried?"

PRISONER.—"By God and my Country."

CLERK.—"God send you a good deliverance! Are you ready to come to trial?"

(The prisoner's counsel then confers with the Court, and a day in the future is set for the trial; or upon announcing himself ready, the trial is immediately entered upon.)

FORMAT THE TRIAL.

30. *Jurors offered and challenged, or sworn.*

CLERK.—Having a list of all the Jurors in attendance, arranged in their order, (2 Bail. 32,) to wit, first, Jury No. 1; second, Jury No. 2; third, super numeraries, as they were originally drawn (the prisoner or his counsel having been previously furnished a list so prepared, if asked for,) and having called all over so as to ascertain which are in attendance, addresses the prisoner in the dock: *

"A. B., prisoner at the bar, these good and lawful men, whose names you will now hear called over, are the jury who are to pass between the State and you, upon your trial for your life or your death; (*or for the felony whereof you stand charged,*) if you would challenge them or any of them, you must do so as each one comes to the book to be sworn, and before he is sworn."

The Foreman of Jury No. 1, being called by the Clerk, and appearing:

CLERK TO THE JUROR.—"Lay your hand on the Book."

Here a short pause for the Solicitor to decide as to the Juror. He may direct any juror to stand aside, and the Juror must do so, and cannot be again presented until all the Jurors in attendance have been presented, when the Solicitor must show cause of challenge against the Juror, or permit the prisoner to accept him if he will. The Solicitor cannot exercise his right of challenge after a Juror has been accepted by a prisoner.

CLERK TO THE JUROR.—"Look on the Prisoner."

CLERK TO THE PRISONER.—"Look on the Juror. What say you?"

If a peremptory challenge be made, the prisoner speaking for himself, and not by counsel, says '*I challenge him.*' If challenge for cause be intended, counsel are then heard.

PRISONER.—(If no challenge be made.) "Swear him."

CLERK.—(*Oath of the accepted Juror.*) You shall well and truly try, and true deliverance make between the State of South Carolina and the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to the evidence. So help you God: (And so on until twelve are sworn.) †

* The practice of calling up Jurors in the order in which they have been impannelled, has been changed, or is not adhered to, but the names of all the Jurors in attendance are put in a box and drawn out one by one, by a child of ten years or under.

† If the panel be exhausted, and Jury incomplete, the Court will direct the Sheriff to bring in from the bystanders a sufficient number of persons not legally disqualified to act as Jurors, and they will be drawn, and challenged, or sworn, until a Jury is formed.

The twelve having been sworn, and a foreman appointed, the Clerk calls over the names of the twelve slowly: the Sheriff in an audible voice, counting *one*, when the first Juror answers: *two*, when the second answers, and so on to *twelve*, when the Clerk answers, "and all sworn," Silence ordered.

If a jury be called to try any issue of fact here made, they will be sworn specially, to try and determine between the State and the prisoner at the bar, whether, &c.

31. *Jury charged.*

CLERK TO THE PRISONER.—"A. B., prisoner at the bar, hold up your hand: put it down."

CLERK TO THE JURY.—"Gentlemen of the Jury, who have been sworn, look upon the prisoner at the bar, and hearken to his charge: A. B., now prisoner at the bar, stands indicted by the name of A. B. for that he A. B., late of the County of, &c."

[Recite the whole indictment from "that" onward. Where the words "*and so the jurors aforesaid do on their oath say*" occur towards the end of a Count, change them to "*and so he is charged*;" at the beginning of a second or any subsequent Count, instead of the words "*and the Jurors aforesaid do further present that he*," *say*, "*and he stands further indicted that he*"]

"Upon this indictment he hath been arraigned, and upon his arraignment he hath pleaded not guilty, and for trial hath put himself upon God and his County, of which County you are; so that your business is to inquire whether the prisoner at the bar be guilty of the (murder) and felony whereof he stands indicted, or not guilty. If you find him guilty, you shall say so; if you find him not guilty you shall say so, and no more. So hearken to the evidence.

32. *Oath of a witness on the trial of a felony.*

The evidence you shall give to the Court and Jury on this trial, now to be had between the State of South Carolina and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you God.

33. *Verdict rendered and recorded.*

The Jury having returned into Court, the prisoner being in the dock, the Clerk calls over the names slowly.—the Sheriff counting as in No. 30.

CLERK TO THE JURY.—"Gentlemen of the Jury have you agreed upon your verdict?"

The Foreman answering "*Yes*" and handing the record to the Clerk, the Clerk reads the title of the case.

The State, *vs.* A. B., } Indictment. (Murder, or other felony.)

(*Then the verdict.*) "We find, &c. Foreman."

CLERK TO THE JURY—That is your verdict, and so say ye all."

If no contradiction be made the verdict is recorded.

34. *Proceedings when prisoner is called for sentence.*

CLERK.—"A. B., hold up your hand: put it down. You have been indicted by the name of A. B., for that. [Here recite the indictment as upon the arraignment, (No. 29,) saying, "*you have been charged*," instead of, "*you are charged*;" and "*you*

have been further indicted," instead of, "*you are further indicted.*"] You were upon this indictment arraigned, and upon your arraignment did plead not guilty, and for your trial did put yourself upon God and your Country, which County hath found you guilty of murder, (manslaughter.) What have you now to say why sentence of death should not be passed upon you?"

* The prisoner prays benefit of Clergy, if entitled to it, or pleads other matter which may arrest the judgment, as notice of appeal (if he be put thus to plead it;) perhaps pardon. See Stroo. 350.

35. *In the Court of Appeals.*

(*As in No. 34 to* *) "then did find you guilty (of manslaughter.) You did then appeal to this Court, and submit here a motion (*or* motions) for new trial, (and in arrest of judgment.) Your motions, after patient hearing and careful consideration, have been dismissed. What have you now to say, why sentence of death should not be passed upon you?"

36. *When judgment of death has been before pronounced upon a prisoner, and he is called upon to show cause why a new day for execution should not be assigned.*

CLERK.—"A. B., hold up your hand: Put it down. You were heretofore indicted for that you," (read the indictment as in No. 29.) "upon that indictment, (by the plea of guilty, you were convicted: *or,*) having put yourself upon God and your Country, you were convicted (of manslaughter:) upon that conviction you were solemnly demanded to show cause, if any you had, why sentence of death should not be passed upon you; and no sufficient cause to the contrary having been shown, the judgment of the law was pronounced, that you should be hanged by the neck until your body be *dead.* What have you now to say, why the Court should not proceed to award execution against you on the said judgment?"

Here the prisoner may plead a pardon, and it may be allowed: or the Solicitor may counterplead a breach of some condition in the pardon, which the prisoner may admit or deny. Or, if the prisoner has been out of custody since the judgment, he may allege that he is not the person against whom the sentence was pronounced. Insanity may here again be suggested. Any collateral issue of fact is to be tried by a jury sworn specially as in No. 30.

The Clerk must be very careful in the entries.

37. *In case of a woman, after judgment.*

CLERK.—A. B., hold up your hand. Put it down.* What can you say for yourself in stay of the execution of the judgment which hath been given against you?"

If sentence has not been pronounced immediately before, introduce directly after the *above, "You were heretofore for that &c." [as in No. 36 down to 'DEAD'.]

38. *The Fore-matron's Oath.*

You as Fore-matron of this Jury, do swear, that you will search and try the prisoner at the bar, whether she be with child of a quick child, and thereof a true verdict give according to your skill and understanding. So help your God:

If the Solicitor should intend to resist the plea of *Clergy*, on account of a former grant of the benefit, prior to the commission of the felony of which the prisoner is now convicted, he should have procured a certificate of the former proceedings and conviction from the Clerk of the County where they were had: (if they were not had in this County where the originals may be in Court,) and should have prepared a regular counter plea, to which the prisoner should answer. If, however, all the pleadings be *ore tenus*, great care on the part of the Clerk is necessary in making the proper entries in the Journal, for no other *record* is made up in this State.

39. *The rest of the same Jury; one by one.*

The same oath your Fore-matron hath taken on her part, you shall well and truly observe and keep on your part: So help you God.

40. *Oath of an officer to keep the Jury—of Matrons.*

You swear that you will keep the Jurors sworn of this Jury in the room appointed for them, (*or* in some quiet convenient place,) without meat, drink or fire, (water and candle-light only excepted,) until they shall have agreed on their verdict, or you shall have been otherwise ordered by the Court; that you will suffer no person (but the prisoner) to speak to them, nor any of them without leave of the Court, nor speak to them or any of them yourself without such leave, except yourself to ask whether they have agreed upon their verdict: So help you God.

41. *Verdict of the Jury of Matrons.*

We find that A. B. is (*or*, is not) pregnant with quick child. Foremation

If the verdict be that she is pregnant, a reprieve until the next term is of course granted; and the whole proceedings are carefully entered by the Clerk. At the next term she is again presented. See 1. Cr. Cr. Law. 760.

BENEFIT OF CLERGY.

42. *Demand why not judgment, (see No. 34), Prays benefit of Clergy—allowed.*

The State *vs.* C. D., Grand Larceny.

It being solemnly demanded of the prisoner if he hath anything to say why the Court should not proceed to judgment and execution against him, he prayeth that the benefit of clergy may be allowed to him—*and it is allowed: Whereupon it is considered by the Court here, that the said C. D. be imprisoned for months, &c.

43. *Counter plea filed—Judgment prayed.*

But (*As in No. 42, to*—*)Esquire, the Solicitor in behalf of the State, filed a counter plea stating that he, the said C. D. was not entitled to the benefit of Clergy, because at &c., he was indicted for that : Thereupon he was convicted, and prayed that the benefit of Clergy might be allowed to him, and the same was allowed accordingly, and it was considered by the Court last mentioned that he, the said C. D., should be imprisoned, &c., and that the said C. D., who stands convicted of Grand Larceny at the Court of General Sessions now here holden, is the same person who was convicted of manslaughter at &c., on &c., as aforesaid, and not another, and different person: whereupon since the said C. D., has already been admitted to his Clergy, the said , Esquire, for the State prayeth the judgment of the Court here, and that the said C. D., may receive judgment to die according to law.——†

44. *Inspection: Certificate: no record: Sufficiency of both.*

(*As in No. 43 to* †) And by the inspection of the record, [*or*, by the certificate of D. H., Clerk of the Court of General Sessions and Common Pleas for the Coun-

* See 6. Stat., 489, 508.—11, Stat, 341, and 2, Rice, 122.

ty of , where the record of conviction set forth in said counter plea is kept.] it appears that the said C. D., was convicted and did receive the benefit of Clergy as set forth in the said counter plea, and that he is the same person, and this he the said C. D. does not deny ; therefore, it is considered that the benefit of Clergy be not allowed to the said C. D, : but that he be taken hence, &c. (As in No. 47.)

45. *Answer to counter plea. Identity denied. Jury ordered. Changes of Jury. Verdict. Clergy denied. Sentence.*

(*As in No. 43 to*—¼) To this counter plea the prisoner pleads *nul tiel record*, and denies that he is the person named in the said counter plea, and for the State the Solicitor aforesaid joins issue thereupon. Whereupon for the trial of the said issue, a Jury is ordered. Of Jury No. 2, E. T. and M. K., are challenged for cause by the State ; A. C. and G. T. challenged for cause by the prisoner, and O. H. and F. D. challenged peremptorily by the prisoner, and a jury is formed consisting of L. M. &c., who having been sworn to render the truth concerning the matter in issue, and having heard the said record of conviction, (*or*, the said certificate of said conviction,) and the testimony of witnesses in open Court, do say upon their oaths that the prisoner is the same identical C. D., in the said record and conviction (*or*, in the said certificate of conviction,) named, who on, &c., at, &c., was convicted of and then and there received the benefit of Clergy, as in the said counter plea is alleged. Therefore, it is considered that the benefit of Clergy be not allowed to the said C. D , but that he be taken &c. (*As in No. 47.*)

46. *Oath of Juror on trial of Identity.*

You shall well and truly try (whether the prisoner at the bar was convicted of at in this State, on : and, whether he is the same person who then and there was tried and convicted, and received the benefit of Clergy ;) and a true verdict give according to the evidence. So help you God.

Varying the matter between the brackets, the same form of oath will serve for the trial of any fact collaterally presented.

47. *Demand why sentence of death should not be passed. Nothing said—judgment to be hanged—prisoner remanded.*

The State vs. A. B. Murder.

It being solemnly demanded of the prisoner at the bar, if he hath anything to say why sentence of death should not be passed upon him, he saith nothing further, unless as he had before said. Wherefore it is considered by the Court, (and pronounced as the judgment of the law,) that the said A. B., be taken hence to the place whence last he came, there to be kept in close and safe custody until Friday the day of next ; and that on that said Friday, between the hours of ten in the forenoon and two in the afternoon, he be taken to the place of public execution in this County, and there be hanged by the neck until his body be dead. And may God have mercy on his soul.

The prisoner is remanded for execution.

Entries when a prisoner is brought up to receive award of execution, or assignment of new day, where sentence of death has before been passed upon him, but not been executed at the time appointed. (see No. 33.)

48. *Recital of Conviction and judgment. Solemn demand.*

The State vs. A. B. Murder.

The prisoner having (*as it is said,*) been convicted at term of this Court of murder, and sentence of death having been passed upon him, (*as it is said,* ‡) is now by the Sheriff (under the warrant of) put to the bar, and it being solemnly demanded of him if he hath any thing to say why the Court should not proceed to award execution of the judgment before pronounced against him.———* (*See Nos.* 35, 47.)

Insert if the question of identity be found in favor of prisoner.

49. *Award of Execution.*

(As in No. 48 to—*) saith nothing. Therefore, it is considered, that execution be done upon the said A. B. the prisoner, according to the said judgment: and that he be taken hence to (the place whence last he came,) [the common jail of this County,] there to be kept in close and safe custody with, &c. (*As in sentence of death No.* 47).

50. *Identity denied—issue joined.*

(As in No. 48 to—*) Saith that he is not the person named in the record of conviction, and the judgment pronounced at term as aforesaid; and in behalf of the State, the Solicitor saith that he is the identical same person so named in the said record; and issue is joined thereupon. Wherefore for the trial of the said issue, &c. (*As in No.* 45, *leaving out what relates to the benefit of Clergy*).

51. *Pardon pleaded.*

(*As in No.* 48 *to*—*). Saith that he hath been pardoned of the said (murder and) felony whereof he was convicted and sentenced as aforesaid, and produces the pardon of his Excellency Governor of the State; dated and under the seal of the State:—†

52. *Pardon allowed—discharged.*

(*As in No.* 51 *to*—†). Whereupon all and singular the premises being seen and by the Court here understood, it is considered that the said A. B. be discharged and go thereof without a day.

53. *Condition of Pardon: Imprisonment, then Discharge.*

(*As in No.* 51 *to*—†). Made upon condition that he be imprisoned, &c. Whereupon it is considered that the said A. B. be imprisoned, &c., and afterwards go thereof without a day.

54. *Replication—Condition; broken—writ of Execution prayed.*

(*As in No.* 51 *to*—†). But Esquire, the Solicitor in behalf of the State, saith that the said pardon was granted upon a condition inserted therein,

If a pardon be produced in Court, it should be kept by the Clerk, and filed as a part of the record in the case. If a pardon be produced to a Sheriff, it is in the nature of *a supersedeas* and sometimes of a precept, and should be kept by him as his warrant for doing what it directs, and be returned to the Clerk to be filed, as the Sheriff's return of the reason why the order of the Court was not obeyed.

that the said A. B. should, within two months from the date of the said pardon, depart from the limits of this State, and not return to the same afterwards; and that, in violation of the said condition, the said A. B. having departed from the limits of this State, did afterwards, to wit, on the day of at return to the said State, and was within the limits thereof: Whereupon the said Esquire, prayeth award of execution, that the said A. B. may die according to the judgment of the law pronounced against him, as aforesaid.—†

55. *No Denial—Execution awarded.*

(*As in No. 54 to*—†). And this the said A. B. cannot deny. Whereupon it is considered that execution be done upon the said A. B., the prisoner, according to the judgment aforesaid; and that he be taken, &c. (*as in No. 47.*)

56. *Breach denied. Issue.*

(*As in No. 54 to*—†). And to this the said A. B. saith he did not violate the condition of the pardon aforesaid, in manner and form as the Solicitor hath alleged, and prays that inquiry thereof may be had by the County. And the said Esquire, Solicitor doth so likewise. Wherefore, for trial of the issue thus joined, a Jury is ordered, (*and so on, as in No. 45, varying to suit the case*).

CONCERNING BASTARDY.

57. *Order after conviction in Bastardy.*

The State, *vs.* C. D. Bastardy.

The defendant C. D. having been by the verdict of a Jury convicted of being the father of a (male) bastard child, begotten on the body of E. F. (spinster) and born day : It is ordered, that the said C. D do enter into recognizance for the maintenance of the said child, as required by law, on or before next; and that failing therein he be liable to execution according to law.

(Signed by the Judge.)

58. *Recognizance for the maintenance of a Bastard Child.*

Payable to the State by C. D., (the father of the child,) and two good and sufficient sureties. Penalty $300 each.

Recital.—[Whereas, at a late term of the Court of General Sessions for County, the said C. D., was convicted of] being the father of a (male) bastard child, *begotten* on the body of E. F. (spinster) and born on the day of

Condition.—Now the condition of this Recognizance is such, that if the said C. D. shall annually pay twenty-five dollars for the maintenance of the bastard child aforesaid, until it attains the age of twelve years, and shall save harmless the County aforesaid, then this Recognizance to be void and of none effect; otherwise to remain in full force and virtue.

If the recognizance shall have been given before conviction, in the recital, instead of what is inclosed in brackets, say:

"Whereas, the said C. D., has been charged with."

59. *Fi. Fa., after failure of a defendant convicted of Bastardy to enter into Recognizance.*

THE STATE OF SOUTH CAROLINA, County. } *The State of South Carolina.*

To all and singular the Sheriffs of the said State, greeting:
Whereas, at a Court of General Sessions, lately held for the County aforesaid, C. D. was convicted of being the father of a (male) bastard child, begotten on the body of E. F. (spinster) and born on the day of ; and the said C. D. having failed to enter into recognizance as required, is by the order of the Court aforesaid liable to execution:

You and each of you are, therefore, hereby commanded without delay, to levy of the goods and chattels, houses, (&c.) of the said C. D., the sum of three hundred dollars which he has been adjudged to pay for the maintenance of the said child, and also the sum of dollars, for the costs and charges which have accrued on the prosecution of the said C. D. for the matter aforementioned. And have you the said money's, together with this writ, before the Clerk of the said Court, according to law.

Witness, H. J., Clerk of the said Court, at, &c.

(Seal of Court.)

60. *Indorsement on the execution.*

"When the defendant has satisfied the costs, and paid the instalment of twenty-five dollars which next falls due, this execution shall be stayed until another instalment falls due, and so on annually; the instalment being twenty-five dollars, payable annually on the birth-day of the child, until it attains the age of twelve years, to wit: on the day of 18

H. J., C. C. P."

CERTIFICATE OF CONVICTION.

61. *Certificate of conviction, granted by Clerk to exclude a felon from the benefit of Clergy.* (*Sec.* 11 *Stat.*, 77.)

THE STATE OF SOUTH CAROLINA, County. } To the Honorable the Court of General Sessions for County.

These are to certify: That at a Court of General Sessions begun to be holden, &c., and thence continued, &c., A. B. was indicted for that (*copying indictment*:) upon this indictment he was on day in the said Court arraigned, and for trial put himself upon God and his County; and afterwards on day in the said Court he was convicted of the said felony; the Jury having returned the following verdict: We find, &c., and on day in the said Court he was put to the bar, and it being solemnly demanded of him to say why the judgment of the Law should not be pronounced against him, he prayed the benefit of his Clergy, and it was allowed: all which appears by the record remaining in my office.

In witness whereof, I have hereunto set my hand and seal of office, this day, &c.

[Seal.] H. J., Clerk, G. S.

COMMON RULES IN SESSIONS.

62. *Form of Common Rules, signed by Judge, on motion of Solicitor.*

IN THE GENERAL SESSIONS, }
County. } (February) Term 18

On motion of the Solicitor, it is ordered.

1. That all recognizances which have not been specially discharged, be continued over to the next term.

2. That bench warrants issue against all persons against whom bills of indictment have been found at this, or any former term, and who have not yet been bound over to answer the same; and against all persons who have been convicted at this, or any former term, and have not appeared to receive judgment. And if any of the said persons have removed from, or are without the limits of this County, that the bench-warrants against them, or any of them be forwarded by the Clerk to the Sheriff of any and every County in this State, in which such persons, or any of them, respectively reside, or may be found.

3. That *scire facias* issue against all persons who have been bound over to prosecute, or to answer, or to give evidence, and who have not appeared, pursuant to the condition of their respective recognizances; and also against all persons who have been summoned to attend Court as Grand or Petit Jurors, and who have not attended, or been excused.

4. That process of execution issue against all persons who at this, or any former term, have been fined, and have not paid their fines; or who have been convicted, or pleaded guilty, and have not paid the fees and costs, taxed and due upon their respective prosecutions.

5. That the Clerk issue process to bind over all witnesses, who have not been bound over, not only in prosecutions already returned to this Court, and not finally disposed of, but also in all prosecutions which may be returned into his office by competent authority before the next term.

63. *The Sessions Journal should also contain:*

Every order made on any presentment of the Grand Jury, copied from the original writing; or taken down as it is pronounced.

Any order for a copy of an indictment to be furnished to a defendant, on his trial, or after his final discharge from a prosecution for felony; and every other order relating to the business in the Sessions, which may be signed by the Judge.

Every entry (which disposes of a matter on the docket,) made by the Judge on either the Sessions or Contingent Docket, which is not reduced to a special order and signed.

All orders of Estreat, and fines imposed, for contempt of Court or otherwise—*

64. *Oath of the Petit Jury charged with the trial of a misdemeanor in the Sessions.*

You shall well and truly try the issue joined in this case, the State against F. H. for , and a true verdict give according to the evidence.

* The importance of minute and careful entries (*exact as well as careful*) cannot be over estimated; a fact which has been fully appreciated by Courts in most of the northern States, as is evidenced by their employment of official stenographers; two Circuits being also similarly provided in our own State.

The Jurors may be sworn, three at a time, their names being called as each lays his hand on the book. It is important not only in the case of the Grand Jury, but with Petit Juries, that after any recess, or adjournment, leaving a case unfinished, the members of the Jury should resume the identical seats vacated by them.

Issue is supposed to be joined in every case but upon trial, even though a defendant do not attend.

65. *Oath of a witness on the trial of a misdemeanor in the Sessions.*

The evidence that you shall give the Court and Jury in this case, the State against F. H. for , shall be the truth, the whole truth and nothing but the truth. So help you God.

66. *Oath on the Voire Dire.*

You shall true answer make to such questions as shall be put to you, touching your interest in the event of this cause. So help you God.

67. *Oath of a Constable on retiring with a Jury, or Jurors, on leave.*

You shall retire with such Jurors as have leave of absence from this Court; you shall not speak to them yourself in relation to this trial, nor suffer any person to speak to them; and you shall return with them without delay. So help you God.

68. *Oath of Constables to keep Jury on an Adjournment.*

You shall retire with the Jury to some convenient room, to be furnished by the Sheriff; you shall not speak to them yourself, nor suffer any other *person* to speak to them in relation to this trial, and you shall return with them at the order of the Court. So help you God.

69. *Oath of Constables who attend the Jury, when they retire to consider their verdict.*

You shall well and truly keep every person sworn of this Jury, in some private and convenient place, without meat or drink, water excepted; you shall not suffer any person to speak to them, nor speak to them yourself, without leave of the Court, except it be to ask them whether they have agreed upon their verdict, until they have agreed on their verdict. So help you God.

70. *Oath of an Interpreter.*

You shall truly interpret between the Court, the Jury, the Counsel and the witness E. F., in the issue joined between A. B. plaintiff, and Y. Z. defendant. So help you God.

71. *Oath of an Interpreter to a Deaf and Dumb witness.*

You shall well and truly interpret between the Court, the Jury, the Counsel and the witness, E. F., here produced in behalf of A. B. in this issue joined between A. B. plaintiff, and Y. Z. defendant. So help you God.

72. *Oath of a Trier on a challenge to the favor.*

You shall well and truly try and find whether M. N., the juror challenged, stands indifferent between the People of the State of South Carolina, and the prisoner at the bar. So help you God.

73. *Oath of a witness before the Triers.*

You shall true answers make to such questions as shall be put to you, touching the challenge of M. N., as a juror. So help you God.

74. *Finding of the Triers.*

The finding is, that M. N. stands indifferent, (*or*, not indifferent.)

75. *Proclamation for Discharge.*

Hear ye, hear ye, hear ye: No cause being shown why T. F. should longer remain in custody of the Sheriff of the County of , he is discharged.

76. *Proclamation for discharge of persons against whom no Bills are found.*

Hear ye, hear ye, hear ye; If any man can show cause why A. B. should stand longer bound [*or imprisoned*], let him come forth, and he shall be heard, for said A. B., stands upon his discharge.

---

77. *Constitutional Oath.*

To be taken by every person elected or appointed to any office of trust or profit in this State, before entering upon the duties of his office.—*

* Trial Justices and nearly all other County officers are required to take the necessary oaths before the Clerk. They are also required to qualify within thirty days after notice of election or appointment.

I, H. J., do solemnly swear that I am duly qualified, according to the Constitution of the United States, and of this State, to exercise the duties of the office of to which I have been elected; (*or*, appointed,) and that I will faithfully discharge to the best of my abilites, the duties thereof; that I recognize the supremacy of the Constitution and the laws of the United States over the Constitution and laws of any State; and that I will support, protect and defend the Constitution of the United States, and the Constitution of South Carolina, as ratified by the people on the sixteenth day of April 1868: So help me God.

78. *Oath against Gaming.*

To be taken by every Sheriff, Deputy Sheriff, Coroner, Deputy Coroner, Trial Justice and Probate Judge, before he shall be qualified to act in his office. Sec. 6, Stat., 27.

I further swear, that I will enforce, and to the extent of my power and ability carry into effect, the Act of the General Assembly, passed in 1816, entitled "An Act the more effectually to prevent the pernicious practice of gaming," and in all cases will bring to justice violators of the same, whenever such violations shall come within my view and knowledge: So help me God.

79. *Additional Oath to be taken by every County Officer before entering upon the duties of his Office.*

I, do swear, (or affirm, as the case may be,) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected (or appointed,) and I will not directly or indirectly sell or dispose of said office, or the profits thereof; but will resign, or continue to discharge the duties thereof during the period fixed by law, if I so long live: So help me God.

In the case of the Sheriff and the Clerk, the requisite oaths are to be endorsed on their respective Commissions; those of the Clerk being taken and subscribed in the presence of two Trial Justices. See Gen. Stat., 145, 161,—6, Stat., 27,—11, Stat., 99.

JURORS.

80. *Writ of Venire Facias, for Petit Jury.*

THE STATE OF SOUTH CAROLINA, }
County. } *The State of South Carolina:*

To the Sheriff of County, Greeting:

You are hereby strictly required and commanded to serve upon Esquire, Jury Commissioner of said County, this writ of *venire* requiring him the said Jury Commissioner, to draw and annex to the panel of this writ the names of good and lawful men, whom you shall immediately thereafter summon to be and appear before the Court of General Sessions and Common Pleas for the County aforesaid, to be holden at on next, at 10 o'clock in the forenoon, to serve as * Petit Jurors. Herein fail not, or pain of the penalties that will fall thereon.

Witness H. J. Esq., Clerk of the said Court at this day of Anno Domini eighteen hundred and and in the year of the Independence of the United States of America.

(Seal of Court.) H. J., C. G. S. and C. P.

*Grand Jurors are now drawn to serve at the first Court to be held in each year, and are required to attend at each of the regular terms during the year, without further summons. Jurors drawn to serve during one year or at any term held within the same, are exempt from such service during the succeeding year. See 14, Stat., 487.

81. *Special Writ of Venire, in term time.*

THE STATE OF SOUTH CAROLINA, }
County. } *The State of South Carolina,*

To the Sheriff of County, Greeting:

You are hereby strictly required and commanded to summon A. B., C D., E. F., G. H., I. J., and K. L. six good and lawful men, to be and appear immediately before the Court of General Sessions and Common Pleas, now here held, for the said County, to serve as Grand, [or Petit,] Jurors in the place and stead of M. N., O. P., Q. R., S. T., U. V. and X. Y. who have heretofore been summoned, but have made default (*or*, who have been excused, by the Court.)

Herein fail not, &c.

Witness, H. J., Esq., Clerk &c.
(Seal of Court.) H. J., C. G. S. & C. P.

82. *Scire Facias against a defaulting Juror.*

STATE OF SOUTH CAROLINA, County. } *The State of South Carolina.*

To all and singular the Sheriffs of the said State:

You and each of you, are hereby commanded to summon E. F., to show cause by affidavit at 10 o'clock, on the first day of the next Term of the Court of General Sessions and Common Pleas, for County, to holden at on next, why he should not be fined according to law, for failing to attend at Term of the Court aforesaid, and render service as Grand, (*or* Petit) Juror, according to the summons heretofore served upon him.

Witness Esq., Clerk of said Court, at &c.

[Seal of Court.] H. J., C. G. S. and C. P.

83. *Fi. Fa. for fine imposed upon a defaulting Juror.*

THE STATE OF SOUTH CAROLINA, County. } *The State of South Carolina.*

To all and singular the Sheriffs of the said State, Greeting: You and each of you, are hereby required to levy of the goods and chattels, houses, lands, tenements and real estates of E. F., the sum of which, at a Court of General Sessions and Common Pleas, held for the County aforesaid, at on was, after due proceedings had thereon, by the judgment of the said Court imposed upon the said E. F., as a fine for his default in not attending the said Court as a Grand, (*or* Petit) Juror at Term, A. D. 18 , after having been duly summoned; and also the sum of for the costs and charges of the proceedings aforesaid—all of which appears by the record thereof remaining in the said Court.

And have you the said moneys, together with this writ, before the Clerk of the said Court according to law.

Witness H. J., Esq., Clerk, &c.
(Seal of Court.)

Solicitor.

84. *Sci. Fa. upon Recognizance.*

THE STATE OF SOUTH CAROLINA. County. } *The State of South Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

Whereas, A. B., C. D and T. O. lately entered into Recognizance, to wit: A. B. in the penal sum of one thousand dollars, and C. D. and T. O each in the penal sum of five hundred dollars, conditioned that the said A. B. would appear at the Court of General Sessions, for the County of at term 18 , to testify in behalf of the State, (or, to prosecute, or, to answer to a bill of indictment, or, to receive sentence, &c.,) in a certain prosecution, had against for (murder, assault, &c.,) and not to depart without leave of the said Court, which said Recognizance has not been discharged; and now, said Recognizance having become forfeited, for that the said A. B. has failed to appear, as therein he was bound to do, at the Term of the said Court, in the year 18 . These are, therefore, to command you, in the name of the State, that you summon the said A. B., C. D. and T. O., personally to be and appear before the Court of General Sessions, to be holden on the day of

next, at for the County of to show cause, if any they have, why the said Recognizance should not be estreated, and adjudged to be forfeited; judgment to be confirmed and execution issued against them, pursuant to the Act of the General Assembly, in that case made and provided. And have you this writ before the Clerk of the said Court, fifteen days next before the sitting thereof.

Witness Esq., Clerk of the said Court, at the day of in the year of our Lord one thousand eight hundred and and of the Independence of the United States of America, the

(Seal of Court.) Solicitor.

See 5, Stat., 13, 11, Stat., 75.

85. *Fi. Fa. upon judgment confirmed on Recognizance.*

THE STATE OF SOUTH CAROLINA. }
County. } *The State of South Carolina:*

To all and singular the Sheriffs of the said State, Greeting:

Whereas, a Recognizance lately entered into by A. B., C. D. and T. O., for the appearance of A. B. at the Court of General Sessions, for County, as (a witness, or, prosecutor, or, a party defendant,) in a prosecution against for , was forfeited by non-compliance with the condition thereof; and after a *Scire Facias* served upon the said , no satisfactory cause to the contrary having been shown, at a Court at General Sessions, held for the said County, on last, judgment on the said Recognizance was confirmed, to wit, for the sum of dollars, against the said A. B., and for the sum of dollars, against the said C. D. and T. O., severally, besides the costs of the said *Sci. Fa.* and proceedings had thereon: You, and each of you, are therefore, hereby commanded without delay, that of the goods and chattels, houses, lands, tenements and hereditaments of the said A. B., you levy the said sum of dollars, for the costs aforesaid: And have you the said moneys, together with this writ, before the Clerk of the Court of General Sessions for the County aforesaid, according to law.

Witness H. J. Esq., Clerk of the said Court, at &c.
(Seal of Court.)

Solicitor.

This is the ordinary form for *Fi. Fa.* upon Recognizance, but it appears to the compiler that it would be much less difficult for the Sheriff to execute separate and distinct process against the principal and sureties, than thus to have them included in a common writ.

86. *Ca. Sa. for fines and costs.*

STATE OF SOUTH CAROLINA. }
County. } *The State of South Carolina.*

To all and singular the Sheriffs of the said State, Greeting:

You, and each of you, are hereby commanded to take C. D., if he shall be found within your Counties, severally, and him safely keep, so that you have his body before the Court of General Sessions, for County, to be holden at to satisfy the sum of dollars, for a fine, and the further sum of dollars for costs and charges, which sums, in a prosecution lately had in the said Court against the said C. D., for , the said

C. D. has been adjudged to pay, as appears by the records of the said Court. And have you this writ, and the said moneys, before the Clerk of the said Court, according to law.

Witness H. J., Clerk of the said Court, at day of &c.

(Seal of Court.)

87. *Bench Warrant.*

STATE OF SOUTH CAROLINA. }
County. } *The State of South Carolina.*

To all and singular the Sheriffs, Constable, and other Peace officers of the said State, Greeting:

Whereas, at the last term of the Court of General Sessions and Common Pleas for the County aforesaid, it was, among other things, ordered, that a Bench Warrant be issued for the arrest of W. P., against whom (a true bill for has been found). These are therefore, to command you, and every of you, to make diligent search after the said W. P., and him to take and safely keep until he be delivered to the keeper of the Common Jail of this County, or discharged by due course of law. And this shall be a good and sufficient warrant for your doing so, and for the keeper of the said jail receiving the said W. P. from you, and keeping him safely until he is discharged by due course of law.

Witness H. J. Esq., Clerk of the said Court, at &c.

(Seal of Court.)

88. *Warrant of Arrest.*

STATE OF SOUTH CAROLINA. }
County. }

By H. J. Esq., Clerk of the Court of General Sessions for the said County, in the State aforesaid:

To Sheriff, or any lawful Constable of said County:

Complaint upon oath having been made before me by against —*for a violent and felonious assault upon complainant by the said (on Saturday night last, at in said County,) who with a large clasp knife did cut and dangerously wound complainant in the side, and in both hands, and as complainant avers and believes, did verily intend to kill him, &c., [or, as above to—*] for breaking into the premises of complainant at 11 o'clock of last night, the day of May, and stealing 100 pounds of Bacon, the property of said complainant, and carrying the same away.

These are therefore, to command you to arrest the said and have him before me, or some Trial Justice, to be dealt with according to law.

Herein fail not on pain of the penalties that will fall thereon.

Given under my hand and official seal, the day of Anno Domini 18

[Seal] H. J., C. G. S.

89. *Search Warrant.*

THE STATE OF SOUTH CAROLINA. }
County. }

To any Constable of the County of Greeting:

Whereas complaint on oath has been made to me, H. J. Esq., Clerk of the Court

of General Sessions for the said County, that certain personal property, viz: has lately been stolen or embezzled out of the (store or dwelling of) in said County, by some person or persons to unknown, and that suspect that the said property is concealed in the in the said County.

THEREFORE, the State of South Carolina, commands you to search the place where the said property is suspected to be concealed, in the day time, and that you bring the same, (if found,) before me.

Given under my hand and seal this day of 18 .

[Seal.] H. J., C. G. S.

89. *Sentence for Misdemeanor. Imprisonment and fine, security for good behavior and the peace.*

The State, *vs.* E. T. Assault and Battery.

The defendant appearing to receive sentence. Let the defendant, *or*, It is ordered, that the defendant, *or*, It is considered that the defendant be imprisoned six months, (to commence at the expiration of the term of imprisonment to which he has been sentenced in a preceding case.) and be fined one hundred dollars and the costs of the prosecution; and that before he be discharged from imprisonment he enter into recognizance himself in the penalty of one thousand dollars, and two sureties, each in the penalty of five hundred dollars, with condition that for twelve months he be of good behavior and keep the peace toward all the citizens of this State, especially toward the prosecutor N. R. and his wife E. R.

90. *Writ of Habeas Corpus.*

THE STATE OF SOUTH CAROLINA. }
County. }

To W. W., Esquire, Sheriff of County:

You are hereby commanded, that the body of by whatever name the said is called into and under custody, committed and detained, [so it is said,] together with the day and cause of capture and detention of the said you have before us, the subscribing at (the office of J. E. Esq.,) immediately after the receipt hereof, to do and receive what we the said Trial Justices, shall then and there consider in that behalf; and have you then and there this writ.

Witness &c., &c.

J. L. Trial Justice.

H. J. Clerk of the Court of General Sessions.

All writs of *Habeas Corpus* must be marked in this manner, "*Per statutum tricesim prima, Carole secundi Regis*, and shall be signed by the person awarding the same.

On hearing the return in this case, and it appearing to us, that the said prisoner is detained by warrant of commitment for an offence not bailable, it is ordered that he be remanded, to await his trial.

This day of } J. L. Trial Justice.
A. D. 18 }

H. J.,
Clerk of Court General Sessions.

On hearing the return in this case, and it appearing that the said prisoner is detained in custody under a warrant of commitment for a bailable offence, and having entered into recognizance, with surety according to law, it is ordered, that he be discharged from his imprisonment.

This day of A. D. 18 } J. L.

Trial Justice.

H. J.

Clerk General Sesssions.

Writs of *Habeas Corpus* are returnable *immediately* before the judge or other officer issuing the same, and shall be served upon the officer or officers in whose custody the party committed or detained may be, or left at the jail or prison with any of the under officers, under keeper or their deputy and the officer shall within *three* days after service thereof, make return of such writ, and bring, or cause to be brought the body of the party committed or restrained, unto or before the person or persons before whom the writ is returnable, according to the command thereof, and shall then certify the true cause of his detention, or imprisonment.

91. *Warrant of Coroner, (or acting Coroner,) for arrest of person charged by Inquest.*

THE STATE OF SOUTH CAROLINA. }
County. }

To the Sheriff, or any of the Constables of the County of Greeting:

WHEREAS, by the inquisition of [*here name the jurors,*] good and lawful men of said County, taken upon their several oaths before me, the Coroner, (or acting Coroner,) in and for said County, at in said County, Y. Z., is charged with having feloniously murdered M. M., on the day of , 18 . YOU ARE THEREFORE, hereby commanded in the name of the State of South Carolina, forthwith to arrest the said Y. Z., and bring him before me immediately at to be dealt with according to law.

Given under my hand, this day of 18 .

A. W., Coroner.

or, H. J., Clerk, *acting Coroner.*

92. *Subpœna for Witness, in Criminal case.*

THE STATE OF SOUTH CAROLINA. }
County. } *The State of South Carolina.*

To A. B., C. D., E. F. and G. H.

We command you, and each of you, that business and excuses being laid aside, you be and appear before the Court of General Sessions at , on the day of next, at 10 o'clock in the forenoon, to testify and give evidence in behalf of the State, in a certain prosecution against L. O., and P. T. charged with (Burglary and Larceny.) Herein fail not, at your peril.

Witness, H. J., Esq., Clerk of the said Court at this day of 18

(Seal of Court.) H. J., C. G. S.

93. *Attachment against a witness not appearing.*

THE STATE OF SOUTH CAROLINA.)
County.)

To the Sheriff of said County, Greeting:

We command you that you attach A. B., C. D., E. F. and G. H., and forthwith bring them before the Court of General Sessions now sitting in and for said County, to testify and give evidence in a certain prosecution had against L. O. and P. T., and also, to answer all such matters as shall be inquired of them, for that they, and each of them, having been duly subpœnaed to attend upon said Court, have refused and neglected to attend in conformity to such subpœna; and have you here this writ.

Witness, H. J., Esq., Clerk, &c.

(Seal of Court.) H. J., C. G. S.

94. *Witness pay Certificate.*

THE STATE OF SOUTH CAROLINA.
The County of

To Dr.

For attendance as a witness on behalf of the State in the prosecution of
for days, at Term 18 .....
And for mileage for miles traveled .....

Total pay $

Personally appeared before me and made oath that the foregoing account is just and true, and that no part thereof has hitherto been paid; and I certify that said was actually in attendance as herein above set forth.

Sworn before me this day of 18 .

H. J., P. Q.
C. G. S.

95. *Jurors' Pay Certificate.*

STATE OF SOUTH CAROLINA:

I, H. J., Clerk of the Court of Common Pleas and General Sessions, for County, in the said State, do certify that has attended as a Juror, (or actually served as a Constable,) for said County days at Term 18 , and is entitled to receive for the same.....
.....
And for mileage for miles of travel.....

Total pay $

J. M., H. J.,
Presiding Judge. Clerk of Court.

On the back of the certificate should be endorsed the oath of the juror, in the usual form. (See 6. Stat., 29, Gen. Stat., 479.) As certificates are to be issued for each week, it is convenient to have them headed respectively, "First Week" and "Second Week."

96. *Clerk's Affidavit to his Account.*

THE STATE OF SOUTH CAROLINA. }
County. }

Personally appeared before me H. J., Clerk of the Court for County, in said State, and upon oath says: That the within and foregoing account, amounting to dollars, is just and true; that the services therein set forth were actually rendered by him, and that no part of said sum has been paid by discount or otherwise, directly or indirectly. He further swears (*or*, affirms,) that all moneys received by him for fines and penalties or otherwise, and belonging to said County, have been duly paid over to the Treasurer according to law; and that all persons mentioned in the foregoing account, who have been convicted and fined; and who have not paid their fines and the costs of their respective prosecutions, have been discharged, from inability to pay the same.

Sworn and subscribed before me this day of A. D., 18 .

J. J. M.,
Circuit Judge.

H. J.,
Clerk.

97. **ENTRIES IN COMMON PLEAS JOURNAL.**

THE STATE OF SOUTH CAROLINA.
At a Court of Common Pleas—&c., [as in No. 1. to end.]

98. *Juries Re-constituted.*

Jury No. 1. is empannelled, and having retired and selected J. O. as Foreman, return into Court and are sworn for trial of such issues as shall be brought before them. [Here follows a list of Jury No. 1., J. O., Foreman, &c., and Jury No. 2. in the same manner; and then a list of such supernumeraries as remain in attendance.]

99. *Oath of the Petit Jury in Common Pleas.*

You shall well and truly try all issues, and execute all inquests which shall come before you during the present term, and true verdict give according to the evidence. So help you God.

The panel of jurors should stand up during the administration of the oaths, and three at least may be sworn at the same time, the Clerk calling their names, as he swears them.

100. *Oath of a witness before a Jury in Common Pleas.*

†The evidence you shall give the Court and Jury upon this issue between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth: So help you God.

101. *Oath of a witness on a challenge of a Juror.*

You shall true answers make to such questions as shall be put to you, touching the challenge of E. F., a juror: So help you God.

102. *Oath of a Witness; By the uplifted hand.*

You do swear, in the presence of the everliving God, that [*continuing as in No.* 100 *from the*† *to the end*)]

103. *Affirmation of Witness.*

You do solemnly, and sincerely, declare and affirm that [*continuing as in No* 100, *from the*† *to the end.*]

104. *Oath of a party, or interested Witness, preliminary to evidence of the contents of a paper not produced.*

You shall true answers make to such questions as shall be put to you touching the power or control you have over any paper, or the loss or destruction of any paper which would be proper evidence in this cause. So help you God.

105. *Oath of a party, or interested Witness, preliminary to proving the handwriting of a subscribing Witness.*

You shall true answers make to such questions as shall be put to you touching your, [*or*, the Plaintiff's, *or*, Defendant's] ability to procure the attendance of H. G., a subscribing witness to this paper (*or*, the paper in question.] So help you God.

106. *Taking verdict in a Civil Cause.*

Gentlemen of the Jury! Please answer to your names [*Call them one by one.*] Have you agreed upon your verdict?* How do you find? [*The Foreman states the finding of the jury; the Clerk then enters the verdict, and continues:*] Gentlemen listen to your verdict as it stands recorded. You say you find, [*etc., as the finding may be;*] and so say you all.

107. *Entry of Verdict.*

Circuit Court.

A. B. *against* Y. Z. } County of said County, on the Esquire, JUSTICE, . At a Circuit Court held in and for day of , 18 , before J. E.,

JURORS.
[*Insert names.*]

WITNESSES.
[*Insert names.*]

Verdict for defendant [*or*, verdict for plaintiff, damages, $; *or*, verdict for plaintiff against defendant, E. F.; *or, if it be a special verdict, insert the same at length*].*

[*Signature of*] Clerk.

108. *Entry of Verdict, With Assessment of Value of Personal Property.*

Circuit Court.

A. B. *against* Y. Z. } County of, etc., [*as in the preceding form to the*, and then add :*] and the jury assess the value of the said [*mention property in question*] at dollars : [*If necessary add* ; and they further assess the damages of the said defendant by occasion of the delivery and detention of the said property, at dollars.]

[*Signature of*] Clerk.

109. *Entry of Judgment.*

Circuit Court.

A. B. *against* Y. Z. } Judgment, [Date.] This cause being at issue upon the facts and a trial by jury having been had, on which a verdict was found for the plaintiff, that, etc., [*state the finding ; or, if there was no jury, say :* and the same having been submitted to the Court, decision was rendered, etc.]

Now, on motion of G. H., attorney for the plaintiff, it is ordered and adjudged by the said Court, that, etc. [*as the verdict may be*]. Clerk.

110. *Taking Verdict Where Personal Property is in Question.*

[*As in Form* 103 *to the*, and then continue :*] How do you find ? [*The Foreman answers :* We find the title of the horse in question to be in the plaintiff, and assess the value thereof at one hundred dollars. [*The Clerk enters the verdict, and then adds :*] Gentlemen, listen to your verdict as it stands recorded. You say you find, etc. [*As above*]; and so say you all.

111. *Taking Verdict in Actions For Damages.*

[*As in Form* 106 *to the*, and then continue :*] How do you find ? *The Foreman answers :* We find for the defendant ; *or*, We find for the plaintiff dollars damages. [*The Clerk enters the verdict, and again repeats the finding, and makes the inquiry, as in the preceding form.*]

112. *Taking Verdict in Cases of Lunacy, etc.*

[*As in Form* 106 *to the*, and then continue :*] How do you find ? *The foreman answers* : We find that A. B. is a lunatic, of unsound mind, and incapable of managing or conducting his affairs ; *or*, that A. B, was of unsound mind at the time of the execution of the will [or, deed] in question—to wit : on the day of , 18 , and incompetent to execute the same ; *or*, that A. B. was of unsound mind, and incompetent to contract matrimony, at the time of the solemnization of the marriage to E. D.—to wit ; on the day of , 18 . [*The Clerk then enters the verdict, repeats the findings, and makes the inquiry, as in Form* 110.]

113. *Taking Verdict in Action For Recovery of Real Property.*

[*As in Form* 106 *to the*, and then continuing :*] How do you find ? *The foreman answers :* We find the title of the land in question to be in the plaintiff ; *or*, defendant : *If there is a claim for the mesne profits, add* : And assess the damages for withholding the said premises, against the defendant, at dollars. [*The Clerk enters the verdict, repeats the finding, and makes the inquiry, as in Form* 110.]

114. *Polling Jury in Civil Cases.*

[*When the polling of a jury is demanded, the Clerk will begin with the first name on the panel:*]

A. B., you say you find [*as the verdict may be; after the answer is given, then call the next juror*]. C. D., is that your verdict? [*Proceed in this manner through the list, and when all have answered, say:*] Then, gentlemen of the jury, hearken to the verdict, as the court has recorded it. You say you find [*as the verdict may be*] and so say you all.

115. *Oath on Application to Excuse, or Discharge, a Juror or Constable.*

You shall true answers make to all questions now put to you, touching your applicat on [*or*, the application for and in behalf of E. F.] to be discharged [*or*, excused] from attendance as juror [*or*, constable] at this court. So help you God.

116. *On Application of Juror, or Constable, for a Remission of Fine.*

You shall true answers make to such questions as shall be put to you, touching your application [*or*, the application for and in behalf of E. F.] for the remission of your [*or*, his] fine, for default in attending as a juror [*or*, constable] at this [*or*, the last] term of this court. So help you God.

117. *Confession of Judgment, in Court.*

CIRCUIT COURT. } ss.
County. }

A. B., } Debt.
vs. } The Defendant acknowledges the action and confesses judgment
C. D. } as follows: "I appear and confess judgment, for the sum of, &c."

118. *Confession of Judgment before Clerk.*

CIRCUIT COURT. } ss.
County. }

T. M., } Plaintiff.
against } Assumpsit.
S. L. } Defendant.

Personally appears S. L., Defendant, and being duly sworn deposes and says that he, the defendant, is justly indebted to the said T. M., plaintiff, in the sum of $250 over and above all just demands which defendant has against the plaintiff, and that the above confession in this cause is not made or taken with a view to defraud any creditor.

Sworn before me, this day of 18 .

H. J., Clerk. S. L.

119. *Transcript of Judgment from another County.*

CIRCUIT COURT. }
County. }

A. M., }
against } Judgment by Default.
B. L. }

Insert affidavit of plaintiff's attorney, that no answer, summons or notice of appearance has been received. And then the judgment, with amount, and date and subscribed by Plaintiff's Attorney.

And the certificate of the Clerk of the County, where judgment was rendered, as follows:

I hereby certify that the above is a true and correct transcript of the original judgment entered in this office. Witness my hand and seal, this day of 18 .

(Seal.) J. W.
C. C. P.

120. *Transcript of Judgment from Trial Justice Court.*

TRIAL JUSTICE COURT. }
County. }

A. M., }
vs. } On Note.
B. L. } Before R. K., Trial Justice.

Judgment in this action was rendered for the plaintiff, and against the defendant, May 1, 18 .

Recovery	$50.25
Costs	4 00
Transcript fee	25
	$ 54 50

I hereby certify that the foregoing is a true and correct transcript from my docket, of a judgment rendered by me.

Charleston, May 1, 18 .

R. K., Trial Justice.

121. *Execution Against Property.*

THE STATE OF SOUTH CAROLINA.
To the Sheriff of the County of Greeting:

WHEREAS, judgment was rendered on the day of one thousand eight hundred and in an action in the between A. B. plaintiff, and C. D. defendant in favor of said A. B. against the said C. D. for the sum of dollars, as appears to us by the judgment Roll, filed in the office of the Clerk of the Court of Common Pleas, County of AND WHEREAS the said judgment was docketed in your County, on the day of in the year one thousand eight hundred and and the sum of dollars is now actually due thereon:

THEREFORE WE COMMAND YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor on the day when the said transcript was so docketed in your County, or at any time thereafter, in whose hands soever the same may be*, and return this execution, within sixty days after its receipt by you, to the Clerk of the Court of Common Pleas, for the County of

Witness H. J., Esquire, Clerk of said Court at the day of one thousand eight hundred and .

(Seal of Court.) H. J.,
C. C. P.

E. Y.,
Plaintiff's Attorney.

122. *Affidavit to obtain Writ of Attachment.*

STATE OF SOUTH CAROLINA. }
County. } In Common Pleas.

A. B., being duly sworn, says, that the said C. D. is justly indebted unto him in the sum of $50, as nearly as he can ascertain the same, over and above all accounts which the said C. D. has against him, which debt arose upon contract (*or* upon a judgment, stating the court in which it was rendered, and the amount,) and that the said C. D. is about to remove his property liable to execution from the County of where he last resided, with intent to defraud his creditors. *Or.*

That the said C. D. has assigned and disposed of (*or* secreted) his property, with intent to defraud his creditors. *Or,*

That the said C. D. is about to assign, dispose of, or secrete his property, with intent to defraud his creditors. *Or,*

That the said C. D. has departed, or is about to depart from the said County, with intent to defraud his reditors (*or* to avoid the service of civil process). *Or,*

That the said C. D. keeps himself concealed, as the deponent verily believes, with intent to defraud his creditors, or to avoid the service of civil process.

And this deponent further says: (Here set forth the facts and circumstances which prove the fraudulent intent.)

Sworn to before me, this day of 18 .
H. J., Clerk. A. B.

123 *Bond in Attachment.*

STATE OF SOUTH CAROLINA. }
County } In Common Pleas.

Know All Men by these Presents, That in pursuance of the directions of the fourth clause of the Act of the Legislature of this State, passed the twenty-fourth day of September, A. D. 1868, entitled an "Act to Regulate Attachments," we are held and firmly bound unto in the full and just sum of Dollars, to be paid unto the said his certain Attorneys, Executors, Administrators, or assigns.

To which payment well and truly to be made and done, bind Heirs, Executors, and Administrators, jointly and severally firmly by these Presents.

SEALED with Seal and dated the day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

WHEREAS,

about to issue and sue out of the Court of Common Pleas, for the County aforesaid, a Warrant of Attachment, to attach all Real Estate of the said all Personal Estate, including money and bank notes, except such Real and Personal Estate as are exempt from attachment, levy and sale by the Constitution.

AND WHEREAS, under and by virtue of the clause aforesaid in the Act of the Legislature above mentioned, it is directed and prescribed, that before issuing the Warrant, the Judge, Justice of the Peace, or Clerk, shall require a written undertaking on the part of the Plaintiff, with sufficient surety, to the effect

that if the Defendant recover Judgment, the Plaintiff will pay all costs that may be awarded to the Defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least One Hundred Dollars:

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Defendant recover Judgment in the said case, and the said shall pay, or cause to be paid to the said his Attorneys, Executors, Administrators, or Assigns, all costs that may be awarded to the said Defendant, and all damages which the said Defendant may sustain by reason of the Attachment about to be issued as aforesaid, then the above obligation to be void and of none effect or else to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of [Seal.] [Seal.]

124 *Warrant of Attachment.*

THE STATE OF SOUTH CAROLINA. County of } In the Common Pleas.

To the Sheriff of the said County:

Whereas, an application has been made to me by P. T., plaintiff, for a warrant of attachment against the property of R. S., defendant, and it appears, by affidavit, that a cause of action exists in said action in favor of the said plaintiff against the said defendant for the sum of dollars, with interest thereon, from the day of 18 , and the said affidavit specifying the amount of the said claim and the grounds thereof, and that the said defendant and the said plaintiff having given the undertaking required by law:

Now, you are hereby commanded, that you attach and safely keep all the property of the said defendant within your County, in the hands, possession, or control of, or so much thereof as may be sufficient to satisfy the said plaintiff's demand of dollars, with interest as aforesaid, together with all costs and expenses; and that you proceed hereon in the manner required of you by law.

Witness my hand and seal, this day of 18 .

(Seal.) H. J., C. C. P.

By virtue of this warrant, by my deputy, at o'clock M., on the day of 18 , I attached, of the property of the within named debtor, in the hands or under the control of the things mentioned in inventory hereunto annexed, and, and at the same time, delivered to the said a copy of this warrant with the following notice thereon endorsed: I hereby certify the above to be a true copy of the original Warrant of Attachment in this suit, and that the attachment, of which the above is a copy, is now in my hands, and that in it I am commanded to attach and safely keep all the estate, real and personal, of the said the above named debtor within my County, (except such real and personal estate as is exempt from attachment, levy, or sale by the Constitution,) with all books of account, vouchers, and papers relating thereto, and that all such property and effects, rights and shares of stock, with interest thereon, and dividends therefrom, and the debts and credits of the said the above named debtor now in your possession or under your control, are, or which may come into your possession or under your control, will be liable to said Warrant of Attachment, and you are hereby required to deliver all such property

to my custody without delay, with a certificate thereof, and all moneys, claims and demands of said debtor, and due or arising thereupon, or by reason of by the said or any or either of them.

Dated at this day of 18 . W. W.

Sheriff of the County of

To H. J., Esq., Clerk, &c.

Inventory of goods and chattels attached by virtue of the within warrant

Eight mules,	$ 1,200
Six timber trucks,	1,300
Etc. etc.,	2,000
Total amount,	$ 4,500

We the undersigned, appraisers appointed by W. W., Sheriff of County, to appraise the property seized under the within warrant of attachment do hereby certify that we did on the day of 18 value and appraise the said property as herein above set forth.

J. K. E. M.. Appraisers.

Before issuing a warrant of attachment, the officer to whom application has been made, shall reqire a written undertaking on the part of the plaintiff, with sufficient surety, in the amount of at least two hundred and fifty dollars, for the payment of costs, should the defendant recover judgment, or the attachment be set aside by the Court. The affidavit on which the warrant is granted must also be filed within ten days of the issue of the writ. When real estate is attached, a description of the same shall be recorded in the office of the Register of Mesne Conveyances, in a book kept for that purpose; together with the date of the warrant of attachment, the sum demanded, and the officers return thereon. And such attachment so recorded, shall be a lien to bind the real estate from the date of lodgment. See Gen. Stat.. 572, 573.

125. *Justification of Sureties.*

A. B. v. C. D. } In Common Pleas, County.

Attachment. Demand $

Personally appeared P. Q. and S. T. Sureties to the within bond, and severally make oath and say, each for himself, that each of them is a freeholder and householder in the County aforesaid, and worth dollars, over and above what will pay his debts.

Swrn to before me day of 18

P. Q. (Seal.)
S. T. (Seal.)

H. J., Clerk.

126. *Order dissolving an Attachment.*

A. B. v. C. D. }

Case in Attachment

The Defendant C. D. having in this case appeared before the Clerk of the Court and put in special Bail, it is ordered, on motion of Def.'s Att'y, that said Attachment be dissolved.

H. J. Clerk.

128 *Bond by Defendant, to prevent the removal of goods attached.*

Know all men by these presents that we, C, D. and R. R., are held and firmly bound to A. B., in the sum of $ (double the sum stated in the attachment to have been sworn to by the plaintiff), to be paid to him, his executors, administrators, or assigns; to which payment well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our Seals, and dated the 28th day of May, 18

Whereas, W. W. Sheriff of the County of by virtue of a certain attachment issued by J. R., Esquire, on the application and in favor of the said A. B., against the goods and chattels of the above bounden C. D., hath attached of the following goods and chattels of the said C. D., viz.: (Here specify the articles.)

Now, therefore, the condition of this obligation is such, that if the said goods and chattels shall be produced to satisfy any execution that may be issued upon any judgment which shall be obtained by the said A. B. upon the said attachment, within six months after the date of this bond, then this obligation to be void, otherwise to remain of force.

Sealed and delivered in the presence of, and the security approved by me,

C. D. [L. S.]
R. R. [L. S.]

W. W., Sheriff.

129 *Bond to be given by a claimant of the goods attached.*

Know all men by these presents that we. D. S. and L. R., are held and firmly bound unto A. B. in the sum of (double the value of the property attached), to be paid to him, his executors, administrators, or assigns; to which payment well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals and dated the 18

Whereas certain goods, to wit (here enumerate them) were on the day of last seized by W. W., Sheriff, by virtue of of an attachment issued by J. R., Esquire, one of the Trial Justices of the County of ,in favor of the above named A. B. against C. D. And whereas the above bounden D. S. claims the said goods as his proprety,

Now, therefore, the condition of this obligation is such, that if, in a suit to be brought on this obligation within three months from the date hereof, the said D. S. shall establish, that he was the owner of the said goods at the time of the said seizure; and in case of his failure to do so, if the said D. S. shall pay to said A. B. the value of the said goods, with interest, then this obligation to be void, otherwise to remain of force.

Sealed and delivered in the presence of, and the security approved by me,

D. S. [L. S.]
L. R. [L. S.]

W. W., Sheriff.

130. *Affidavit in Trover.*

That the chattel belongs to the Plaintiff, that it has been converted by the defendant, and that it is of the value of dollars.

131. *Bond to be taken by Clerk on granting the Order.*

By plaintiff, or his agent, with good surety, in a penalty equal to double the value sworn to: payable to the defendant, his executors, administrators and assigns.

Condition: Whereas, the above bound [*Plaintiff*] intends to commence [*or*, has brought and has now pending] an action of Trover in the Court of Common Pleas for County, against the above named [*Defendant*] for the conversion of a horse, named Tom; and the said plaintiff desires an order, by which he may have a bond for the production of the chattel sued for, to satisfy his judgment in case he should recover; NOW THE CONDITION of this obligation is such, that if the said [*obligors*] shall jointly and severally be answerable for all damages, which have been or may be sustained by [*the Defendant*] by any illegal conduct in commencing and conducting the said action, then this obligation to be void, &c. [Seal.]

Taken and subscribed before
me, this day of
H. J., C. C. P. [Seal.]

132 *Order in Trover.*

To be annexed to the writ, if made before the commencement of the action; but separate, if made afterwards.

THE STATE OF SOUTH CAROLINA, }
County, } In the Common Pleas.

To all and singular the Sheriffs of the said State:

Whereas, (*the Plaintiff*) intends to commence [*or*, has brought and has now pending] in the Court of Common Pleas for County, an action of Trover against (*the Defendant*) for the conversion of a horse, named Tom, and having given the necessary bond on his part, desires the bond of (*the Defendant*) in such case obtainable:

You and each of you are hereby required, without delay, to arrest the the said (*Defendant*) and cause him to enter into bond with sufficient surety, payable to the Sheriff of the County aforesaid, in the penalty of dollars, conditioned for the production of the said horse, the chattel sued for, to satisfy the judgment of the said plaintiff in case he should recover in the action aforesaid.

Clerk's Office, }
day of } H. J., C. C. P.

133 *Return of Jurors and Constables.*

STATE OF SOUTH CAROLINA, }
County, }

Pay Roll of Jurors and Constables. Term (1st Week)

Names.	days.	miles.	$	cts.

I, H. J., Clerk of the Court of Common Pleas and General Sessions for the County of do hereby certify, that the foregoing is a true, correct and complete Return of the Jurors and Constables in attendance at the term of Court for said County during the first, (*or* second) week of said term, and that all of those within named actually served for the period set forth, and made oath to the distance travelled, respectively.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at this day of A. D. 18

(Seal) H. J.
C. C. P. & G. S.

134. *Execution against the body.*

(As in No. 121 to*, and then as follows:)

And for want of goods and chattels whereon to levy, you are commanded to take the body of the said C. D., and convey him to the common jail of the said County, the keeper whereof is hereby commanded to receive the said C. D., and him safely keep until duly discharged according to law.

Witness, &c., &c.

(Seal of Court.) H. J., C. C. P.

See Code procedure Sec. 202. 215, Gen. Stat., 563. 589.

135. *Execution against Players, Showmen, Circuses, &c.*

To any Sheriff or Constable of the said State:

Whereas, A. B. on at in the County aforesaid, and without the limits of any incorporated town or city (represented publicly, for gain, part of a stage play, *or*, exhibited for gain, a certain show called) without having paid three dollars, the tax required by law to be paid before such representation, or (exhibition.) These are to require you without delay, either to levy of the goods of the said A. B. the sum of (ten) dollars, or take the body of the said A. B., and him safely keep to answer to the State for the sum of (ten) dollars: And this writ with the said monies, if made, to return according to law, to the Clerk of the Court of Common Pleas and General Sessions for County aforesaid.

Witness Clerk of the Court of General Sessions and Common Pleas, this day of

See Gen. Stat., 386.

136. *Commission to Examine Witnesses.*

THE STATE OF SOUH CAROLINA, } In the Court of Common Pleas.
County. }

The State of South Carolina.

To Greeting:

WHEREAS, a certain cause is now pending in the Court of for the said County, wherein And it being necessary to the investigation of the said cause, that certain resident , in should be examined on certain interrogatories; Now know ye, that in confidence of your prudence, ability, and integri-

ty, you are appointed, and by these presents, full power and authority are given to you, or any two or more of you, to examine all witnesses whatsoever, as well on the part of the said as on the part of the said or either of them, upon interrogatories: and therefore, you, or any two or more of you, are hereby authorized and required, on certain days, and at certain places, to be appointed by you for that purpose, to cause such witnesses to come before you; and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken, before you, or any two or more of you, and to reduce their depositions to writing, and to return this Writ to the Judges of the said Court at in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed: And you, and every of you, are hereby further required, that before you proceed to swear and examine any witness, you severally take the oath, first specified in the schedule, hereunto annexed: And any one of you is hereby authorized and empowered to administer such oath to the other, or others of you. And you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed, to any Clerk employed in taking the deposition of witnesses aforesaid, before such Clerk is permitted to act or be present at such examination.

Witness H. J. Clerk of the said Court, at in the County aforesaid, the day of in the year of our Lord one thousand eight hundred and and in the year of the Sovereignty and Independence of the United State of America.

[Seal].

H. J.,

C. C. P.

137. *Satisfaction of Judgment entered by Plaintiff or his Attorney.*

THE STATE OF SOUTH CAROLINA, }
County. } In the Common Pleas.

A.... B...., }
v. } Roll No. Judgment entered day of 18
C.... D...., }

Afterwards, to wit, this day of in the year of our Lord one thousand eight hundred and comes the said A. B., the plaintiff above named [by A. K. his Attorney,] and acknowledges to have received of, and from the said C. D., full satisfaction of the [debt and] damages, costs and charges aforesaid. Therefore, be the said C. D., therefrom, henceforth, forever discharged; and so forth.

138. *Satisfaction entered by Clerk under order of Court.*

(Here enter the Order.)

And now, to wit, this day of according to the order above copied, it is declared that full satisfaction hath been made to the above named (Plaintiff) of the (debt and) damages, costs and charges aforesaid. Therefore, be the said (Defendant) there-from, henceforth, forever discharged; and so forth.

H. J., C. C. P.

139. *Satisfaction entered by the Clerk, after execution has been returned satisfied.*

The Fi. Fa. (*or*, Ca. Sa.) in this case having been returned by W. W., Sheriff, fully satisfied, satisfaction is accordingly entered on the record. Be the defendant henceforth forever discharged.

H. J., C. C. P.

ELECTIONS.

140. *Notice of Election.*

To be posted at the Court-House door and five other public places in the County, and also to be advertised in a newspaper of the County. Act of 1839, p. 24. § 1.

STATE OF SOUTH CAROLINA, County. } Office Court of General Sessions and Common Pleas.

I, H. J., Clerk of said Court, in pursuance of the directions of the Act of the Legislature, in such case made and provided, do hereby give public notice, that an election for of County, will be held on Monday the day of next, at the usual places of election throughout the said County.

Witness my hand at this day of A. D. 18 .

H. J., C. C. P. & G. S.

141. *Notice to the Managers of Election.*

STATE OF SOUTH CAROLINA, County. } Office Court of General Sessions and Common Pleas.

To O. P., R. S. and T. M., Managers of Election, at (Levy's Cross Roads) in the said County.

By direction of an Act of the General Assembly, I hereby notify you severally to attend at the place of election, for which you are Managers, on the Monday of next, open the polls and hold an election for of County, to fill the vacancy which will occur in said office, by the expiration of the term (or by the death, or removal) of the present incumbent.

It will be your duty to attend as directed, and open the polls between the same hours, and in other respects conduct the election in the same manner as is prescribed for the election of members of either Branch of the Legislature, (except that the polls must be opened on Monday only) also, immediately after the close of the polls on said day, to canvass the votes cast, and make up and certify a return of the same, which return and the ballot box containing the votes, you shall transmit, in the custody of one of your number, to the Board of Commissioners of Elections at the County seat, as by law directed.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at this day of 18 .

[Seal.] H. J., C. C. P. & G. S.

NATURALIZATION.

142. *Declaration of Intention, before Clerk.*

UNITED STATES OF AMERICA.
State of South Carolina.
Office Court of Common Pleas and General Sessions, }
County. }

Before me, H, J., Clerk of said Court, personally appeared E. F., a native of , about the age of years, who being duly sworn according to law, upon his solemn oath, declares, that it is, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, and particularly to of whom he is a subject.

Sworn to before me this day of } E. F.
A. D.
H. J., C. C. & S. & C. P. }

This declaration may also be made in open Court.

143. *Certificate of Declaration of Intention.*

UNITED STATES OF AMERICA.
State of South Carolina. }
County. }

Office, Court of Common Pleas and General Sessions, for County.

I, H. J., Clerk of said Court, (the same being a Court of Record, having Common Law jurisdiction, and a Clerk and Seal,) do hereby certify, That E. F., a native of , about the age of years, appeared before me in the office of the said Court, and being duly sworn according to law, upon his solemn oath, did declare, that it is, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, particularly to , of whom he is a subject.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at , this day of , in the year of our Lord , and in the year of the Sovereignty and Independence of the United States of America.

(Seal.) H. J., C. C. P. & G. S.

144. *Notice of intention, when dispensed with.*

Notice of intention is unnecessary if the Alien came to this country prior to the 12th June, 1812, and has since continued to reside here. Such residence must be proved to the satisfaction of the Court, by two citizens, witnesses, on oath, whose names, together with the place where the applicant has resided for the last five years, are to be set forth on the record of the Court. Act of Congress, 1828, ch 116, § 2.

Notice of intention is also dispensed with if applicant arrived in this country under the age of eighteen years, and will declare, on oath, and will prove to the satisfaction of the Court, at the time of his application, that, for three years next preceding, it had been, *bona fide*, his intention to become a citizen; and, in all other respects, comply with the laws in regard to naturalization. Act of Congress, 1824,

ch. 136, § 1. In all other cases a previous declaration of intention is necessary. This declaration may be made before a Clerk of a State Court, being a Court of Record, &c., as well as before a Judge. Act of Congress 1802, ch. 28, § 1, § 3; 1824, ch. 186, § 3.

The party upon application for citizenship, must satisfy the Court by other proof than his own oath, that he has resided five years at least, in the United States, and one year at least, in the State where he applies. He must satisfy the Court, that he is a man of good moral character, attached to the principles of the Constitution of the United States and well disposed towards the good order and happiness of the same. He must, on oath, abjure his native allegiance, and renounce his title of nobility, if any he hath, and take an oath to support the Constitution of the United States.

Any alien, of the age of twenty-one years, and upwards, who has enlisted or shall enlist in the armies of the United States, either in the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the Court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law be satisfied by competent proof of such person having been honorably discharged from the services of the United States, as aforesaid. Act of Congress, 1862, Chap. 200, § 21.

145. *Petition for Citizenship.*

THE UNITED STATES OF AMERICA.

State of South Carolina. } In the Court of Common Pleas and General
County. } Sessions.

To the Honorable , one of the Law Judges of the said State, presiding in the said Court.

The petition of A. B., aged years, following the profession or occupation of , respectfully sheweth: That your petitioner was born in : that he arrived in the United States of America, to wit: At on day and has ever since resided within the United States, to wit, [years in (New York) and since] at in this State, (*showing at least five years residence in the United States, and one year, last past, in this State*): that on day in the year of our Lord, (18) (*at least two years before this petition*) he [in the Court, *or*, before the Clerk of the Court] of Common Pleas and General Sessions for County in this State (*or any other Court of Record in the United States*) declared on oath his *bona fide* intention to become a citizen of the United States and renounce all foreign allegiance, in manner and form as is required by law, (as will more fully appear by the certificate of the Clerk of the said Court, *or*, of the said Clerk, herewith exhibited).

That your Petitioner is sincerely attached to the Constitution of the United States, and well disposed to the good order and happiness of the same: Of which and of the required residence, evidence is contained in the certificate hereto annexed. That he has never borne any hereditary title, or been of any order of nobility whatever.

He, therefore, prays that the oath, which in such case is provided, may be administered to him, and that he may be admitted as a citizen of the United States of America.

BE IT SO. (Signed) A. B.

(Signed by the Judge.)

146. *Certificate as to residence and character.*

We, the subscribers, citizens of the United States of America, do hereby certify, that we have known the petitioner, A. B., for years last past, during which time he has resided within the United States, to wit: At and within this State upwards of one year. That he has behaved during that time, as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

(Signed by two citizens.)

147. *Oath of allegiance and abjuration.*

THE UNITED STATES OF AMERICA.

State of South Carolina. County. } In the Court of Common Pleas, and General Sessions.

I do solemnly swear, that the contents of my Petition are just and true; that I will support the Constitution of the United States of America; and that I do hereby absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to of whom I was born a subject.

And I do further declare, that I have never borne any hereditary title, or been of any order of nobility.

Sworn to in open Court, this day of 18 . } A. B.

H. J., C. C. P. & G. S.

148. *Final Order—to be written on the Petition, and copied on the Journal of the Court.*

Ex parte E. F. Petition for Citizenship.

The Petition and accompanying evidence having been heard, and it appearing that E. F. is, according to the naturalization laws, entitled to become a citizen of the United States, it is ordered that the prayer of the petitioner be granted. Therefore, the oath of allegiance and abjuration, in such case made and provided, is administered to the said E. F., in open Court; and it is ordered, that he be admitted and enrolled as a citizen of the United States of America, and that the proceedings in this matter be filed by the Clerk, and be of record.

(Signed by Judge.)

149. *Certificate of Citizenship, to be furnished by the Clerk.*

UNITED STATES OF AMERICA.

State of South Carolina, County. } Court of Common Pleas and General Sessions.

To all to whom these presents may come: Greeting.

1. H. J., Clerk of the Court of General Sesssions and Common Pleas for County, do hereby certify, That, at a Court of General Sessions and Common Pleas, holden for the County of in the State aforesaid, present, the Honorable , one of the Law Judges of the said State, presiding in the said Court, on the day of , Anno Domini, , E. F., a native of , by profession a , appeared in open Court, and made application to be made a citizen of the United States of America; and he, having complied with all the conditions and requisites of the Acts of Congress, in such case made and provided, for establishing an uniform rule of naturalization, the oath to support the Constitution of the United States of America, and to renounce all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty, whatever, and particularly all allegiance and fidelity to , was administered to him, in open Court, and he, the said E. F., was admitted to citizenship; and is, by virtue thereof, and the premises, declared a citizen of the United States of America.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Court to these Presents, at , in the County and State aforesaid, this day of , in the year of our Lord , and in the year of the Sovereignty and Independence of the United States of America.

(Seal.) H. J., C. C. P. & G. S.

ESCHEATS.

150. *Notification of Escheator.*

THE STATE OF SOUTH CAROLINA, }
County. }

To the Honorable , one of the Judges of the Court of Common Pleas, of the State aforesaid:

I, A. B., Escheator for (County) in the State aforesaid, do hereby notify unto your Honor, that, according to my knowledge and belief, and the information of others, a certain lot of land, situate, &c., hath become escheated to the State aforesaid by the death of E. F., the person last seized in fee simple thereof; the said E. F. having died without leaving any person who can lawfully claim such lot of land either by purchase or descent from him the said E. F., the last proprietor thereof. Wherefore, I, the said A. B., escheator as aforesaid, do hereby issue this my notification of the said supposed escheated lot of land, to your Honor, to the intent, that, at the next meeting of the Court of Common Pleas for the County aforesaid, you may cause the jury thereof, being first duly sworn, to proceed and make a true inquest of the said supposed escheated lot of land, and a true verdict make thereon, according to the Act of the Assembly in such case made and provided.

A. B., Escheator for County.

This notice must be issued to the Judge at least two months before the next meeting of the Court for the County where the lands lie. See Gen. Stat., 493, *et. sec.*

151. *Inquisition of Escheat.*

STATE OF SOUTH CAROLINA, }
County. }

An Inquisition of Escheat, taken at the usual place of Judicature, in the Court

House in , in the County and State aforesaid, the day of , in the year of our Lord , pursuant to an order of the Honorable the Court of Common Pleas, made on the notification of A. B., Escheator for in virtue of the Act of the General Assembly of the State, entitled "An Act to appoint Escheators and to regulate Escheats," and more particularly in virtue of further Acts of the said General Assembly, viz: (*The Act of* 1805, 5, *Stat.*, 507, *and the Act or Acts granting the lands supposed to be escheated to the body corporate which has appointed the Escheator*). Upon the oaths of , good and lawful men of the said County drawn by lot, pursuant to the form of the Act of the General Assembly of the said State, for the present Term of the Court of Common Pleas, for 18 ,who, being charged and sworn to inquire for and in behalf of the State, of and concerning the lands, tenements and hereditaments of which E. F., late of , died seized and possessed: It being heretofore notified by the said A. B., Escheator aforesaid, that the said E. F. died seized and possessed of certain real estate within the said (County) not having in his life time made any disposition thereof, and without leaving any person who can legally claim the same by descent or purchase. The said Jurors so charged as aforesaid and sworn, do, upon their oaths aforesaid, say, that the said E. F. was born at and died in on the day of Anno Domini, one thousand eight hundred and and that, at the time of his death, he was seized and possessed of a lot of land situate, (&c). And they are not informed, nor does it appear in anywise, nor hath it come to their knowledge, that the said E. F. at the time of his death left any person or persons who can legally claim, by descent or otherwise, the said lot of land. And so the jurors aforesaid; upon their oaths, say, that the said E. F. died on the day of Anno Domini , without leaving any person or persons who can legally claim by descent or purchase. And that the said lot of land, of which he was seized and possessed, is become escheated.

In witness whereof, we, the Jurors, have to this inquisition set our hands and seals the day and year first aforesaid.

(Signatures and seals of Jurors.)

152. *Entry in Common Pleas Journal.*

Jury No. 2, having been first duly sworn, proceeded to make inquest of escheated lands, and returned the following verdict—to wit: (*copy the whole Inquisition, No.* 151, *Judge certificate, No.* 151, *Clerk's advertisement, No.* 154.

153. *Judge's Certificate—to be annexed to Inquisition.*

STATE OF SOUTH CAROLINA, } In the Common Pleas, }
District. } Term, 18 }

In pursuance of the Act of the General Assembly, entitled "An Act to regulate Escheats," I, , one of the Judges of the Honorable the Court of Common Pleas, presiding at this present Term, do hereby certify, That, the Jury impannelled for the trial of causes thereat, being first duly sworn to proceed and make true inquest of all such supposed escheated lands, as should be subjected to their investigation, by the Escheator of , and a true verdict make theron, did return to the said Court, the within verdict and inquisition by them had and made on the within case of the Real Estate of E. F then and there submitted to their investigation by the said Escheator.

Given under my hand and seal this day of A. D. J. J. M., Judge

The inquisition and certificate must be recorded by the escheator, and within two months from the date of the inquisition, be returned to the Clerk, to be filed and kept as a record of Court.

154. *Clerk's Advertisement.*

STATE OF SOUTH CAROLINA, }
County. } Office Court of Common Pleas.

Whereas an inquest of Escheat hath been returned into this office, whereby, it appears, that E. F., late of who was born in (*name place of birth.*) and died about the year , was seized and possessed at the time of his death of a lot of Land, (*describe the land particularly.*) without having in his lifetime made any disposition thereof, and without leaving any person who can legally claim the same,—Now, in pursuance of the directions of the Act of Assembly in such case made and provided, the Heirs of the said E. F., or others claiming under him, (if any there be), are hereby required to appear and make claim within eighteen months from the date hereof.

Witness my hand at this day of A. D.,

H. J., C. C. P.

155. *Clerk's process to Escheator.*

STATE OF SOUTH CAROLINA. }
County. } In the Common Pleas.

The Escheator for }
vs. }
The Real Estate of E. F. }

Whereas, an inquest of Escheat in the above case hath been made, certified, returned and advertised according to law, and no person, within twelve months from the last date of said advertisement, hath appeared and made title to the lot of land described in said inquisition as a lot of land, &c., whereof, E. F., the last proprietor, died seized in fee, without leaving any person who can lawfully claim the same either by purchase or descent from him the said E. F. Now, in pursuance of the directions of the Act of the General Assembly, in such case made and provided, the said lot of land is hereby pronounced to be escheated and vested according to law. And the Escheator for is hereby directed to sell and convey the same upon the usual notice. In witness whereof, I have hereunto set my hand, and caused the Clerk of the Court of Common Pleas for the County aforesaid, to affix the seal of the said Court this day of A. D., 18 .

(Seal.) (Signed by the Judge).

As to the notice of sale to be given by Escheator, see 1787, 5, Stat., 47, § 4.

156. *Traverse, &c.*

For the mode of procee ling if any claimant comes in, see 6th Sect. of the Act of 1789. There must be a petition setting forth the claim—a traverse of the Inquisition: Lands committed to the claimant, upon good evidence of his title to hold, until the right be found, and sufficient security by him—Issue upon the travese—*venire*—trial—and judgment:—costs to follow finding against Escheator, if Jury think there was no probable cause for supposing the lands escheated.

CLERK AS REGISTER OF MESNE CONVEYANCE.

157. *Satisfaction of Mortgage: Entered by the Mortgagee.*

To be entered in the Registry which contains the mortgage, with reference made to the page where the mortgage will be found, and on that page, reference to the page where the satisfaction will be found. It is much better, neater, and more convenient to enter satisfaction on the first vacant page in the mortgage Register, with reference back to the mortgage itself, and cross reference from the mortgage to the satisfaction; than to mutilate and obscure the record by writing satisfaction across the face of the mortgage.

THE STATE OF SOUTH CAROLINA, }
County. }

I acknowledge, that I have received full satisfaction of this mortgage (*or*, of the mortgage recorded—book, page from C. D. to A. B. whose executor I am,] (and of the bond, [*or*, note] it was intended to secure.) and C. D. (*the mortgagor*,) is therefrom hereby discharged.

Witness my hand and seal, &c. [L. S.]

In presence of (*two witnesses.*)

Probate to be made as of an ordinary deed, without which Clerk cannot record.

158. *Satisfaction of a Mortgage, entered by the Clerk under order of Court.*

To be entered on the margin of the page where the mortgage is registered, or upon another page with references as in No. 157.

SOUTH CAROLINA, } In the Common Pleas Term 18
County. }

[*Copy of the order of Court.*]

According to the order above copied, satisfaction of this mortgage (of the mortgage) therein mentioned, is hereby entered, and the said (*Mortgagor*) is therefrom hereby discharged.

H. J., *Clerk & Ex-officio Reg. M. C.*

159. *Common Probate of a Deed.*

STATE OF SOUTH CAROLINA, }
County. }

Personally appeared before me E. F., (*one of the witnesses,*) and being duly sworn says; that he saw the within named T. X. sign, seal, and as his act and deed deliver the foregoing (or within) Deed, (Indenture, Agreement, Release, Conveyance, Instrument of writing; acknowledgment of satisfaction;) and that G. H. with deponent subscribed their names as witnesses of the execution thereof.

Sworn to before me, this day of A. D., 18

H. J., Clerk of Court. E. F.

A common error among Notaries and Trial Justices is, the failure to require the witness to subscribe to his affidavit, thus rendering the Probate of no value whatever, except as a statement of the officer.

160. *Renunciation of Dower.*

STATE OF SOUTH CAROLINA, }
County. }

I, H. J., Clerk of the Court of Common Pleas and General Sessions, for the County aforesaid, do hereby certify to all whom it may concern, that E B., the wife of [the within named] A. B., did this day appear before me, and upon being privately and separately examined by me, did declare, that she does freely, voluntarily, and without any compulsion, dread or fear of any person, or persons whomsoever, renounce, release, and forever relinquish unto [the within named) C. D., his heirs and assigns, all her interest and estate, and also all her right, and claim of dower, of, in or to all and singular [the premises within mentioned and released.]

In witness whereof, she has signed this in my presence.

Given under my hand and seal, this } E. B.
day of, &c. }

[L. S.] H. J., Clerk.

If the renunciation be on a paper separate from the release, omit the words in brackets, and after "singular," add, "the land and appurtenances described and conveyed by a deed from A. B. to C. D., bearing date the day of (and recorded in, &c,") with other sufficient terms of description.

161. *Relinquishment of Inheritance.*

STATE OF SOUTH CAROLINA }
County. }

I. H. J., Clerk of the Court of Common Pleas and General Sessions, and *ex officio*, Trial Justice for the County aforesaid, do hereby certify, unto all whom it may concern, that E. B., the wife of the within named A. B., did this day appear before me, and being privately and separately examined by me, did declare, that the release within written was positively and *bona fide* executed, at least seven days before this, her examination; that she did, at least seven days before this examination actually join her husband in executing the said release, and did then, and at the time of her examination still does, freely, voluntarily, and without any manner of compulsion, dread or fear, of any person or persons whomsoever, renounce, release, and forever relinquish, all her estate, interest, and inheritance, in the premises mentioned and conveyed in the said release, unto the said C. D. and his heirs and assigns.

In witness whereof, she has signed this in my presence.

Given under my hand and seal, } E. B.
day of, &c. }

[L. S.] H. J., Clerk.

162. *Writ of Dedimus Potestatem, to take renunciation of dower, relinquishment of inheritance, or probate of the execution of a deed.*

THE STATE OF SOUTH CAROLINA,

To (*two or more Commissioners*) of County, in the State of (*or*, in the City of in the Kingdom of or Empire of, or Province of)

Greeting:

Know ye, that in consideration of your integrity and skill, full power is hereby given to you [any two or more of you]*

Dower.—To take the renunciation. of E B., wife of A. B., of in the State of , of her dower in the premises described in the deed (hereunto annexed, *or*, from A. B. to C. D. dated, &c, conveying a tract of land, situate, &c.]

Inheritance.—* to take the relinquishment of E. B., wife of A. B., of &c., of her estate and inheritance in the premises described, &c.

Probate—* to take probate of the execution of the [said] deed [hereunto annexed, from A. B. to C. D., dated, &c.] †

Dower or Inheritance.—For this purpose, you will cause the said E. B. to appear before you, and you will examine her privately and separately, apart from all other persons, and if upon such examination, she shall freely declare that she ‡

Dower.—does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish to C. D. his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in and to all and singular the premises described and conveyed in the deed aforesaid.

Inheritance—† did at least seven days before such examination actually join her husband in executing the deed of release aforesaid ; that the said release was positively and *bona fide* executed at least seven days before such her examination, and that she did then at the execution of the said release, and still does at the time of examination, freely, voluntarily, and without any manner of compulsion, dread or fear of any person, or persons, whomsoever, renounce, release, and forever relinquish all her estate, interest and inheritance in the premises mentioned and conveyed in the said release, unto C. D. and his heirs and assigns.

Dower or inheritance.—Then you shall take under her hand a certificate of her renunciation (relinquishment) as aforesaid , in the form of a declaration upon private examination as aforesaid, which certificate, authenticated by your hands and seals, you shall annex to this writ.

Probate † For this purpose, you shall cause one of the subscribing witnesses of the deed aforesaid, to appear before you, and having administered to him, (as you are hereby fully authorized to do,) an oath, or solemn affirmation, according to the form of his religious persuasion, that his affidavit is true, you shall take under his hand an affidavit, that he was personally present, and saw A. B. [and E. B. his wife] sign, seal, and deliver the deed aforesaid, for the uses and intents therein expressed, and that he and the other subscribing witness signed their names thereto as witnesses of its due execution : which affidavit, authenticated under your hands and seals, you shall annex to this writ.

Dower, Inheritance, or Probate. And having certified under your hands and seals, the due execution of this writ, [and verified the same by the oath of one of you before some Magistrate, who is authorized by the laws of your State to administer an oath, and whose official signature may be properly authenticated.] You shall carefully return this writ, together with your proceedings thereon, to the Clerk of the Court of Common Pleas and General Sessions for County, in the State first aforesaid, to be duly recorded. Herein fail not.

Witness, H. J., Clerk of the Court of Common Pleas and General Sessions, for County, at on, &c.

(Seal of the Court.) H. J., C C. P. & G. S.

163. *Certificates to be annexed to the Writ in its execution.*

Renunciation or relinquishment, taken by Commissioners.

THE STATE OF
County. } ss.

I, E. B., the wife of A. B., upon private and separate examination before Commissioners appointed by virtue of the annexed writ of *Dedimus Potestatem* from the State of South Carolina, freely declare, that I, [*Renunciation of Dower, as in writ of ded. potest. or in No.* 160. *Relinquishment of Inheritance, as in writ, or No.* 161.]

Witness my name signed by my own hand. E. B.

We, Commissioners appointed by the annexed writ of *Dedimus Potestatem* from the State of South Carolina, under the seal of the Court for County, in the said State, do hereby certify, that E, B., the wife of A. B., of &c., did this day appear before us, and having been by us privately and separately examined, apart from all other persons, did freely declare, as appears above under her hand, and did in our presence subscribe the foregoing declaration and renunciation (*or*, relinquishment) in manner and form therein stated

Given under our hands and seals, at this day of, &c.

....., [L. S.]

....., [L. S.]

164. *Probate taken by Commissioners.*

THE STATE OF
County. } ss.

I, , one of the subscribing witnesses, to the annexed deed from A. B. to C. D., solemnly swear, that I was present (*as in No.* 159.)

(Signed by Witness.)

Sworn to and subscribed this day of A. D. 18 , before us,

Commissioners appointed by virtue, &c. (*as above.*)

165. *Return of Commissioners.*

To be endorsed on writ.

THE STATE OF
County. }

The execution of the within writ to us directed, appears by the certificates hereunto appended, under our hands and seals.

....., [L. S.]

....., [L. S.]

166. *Oath of one of the Commissioners.*

THE STATE OF
County. }

I, , one of the Commissioners appointed by virtue of the annexed writ, swear, that the commission contained in the said writ was duly executed; and that the execution appears in the annexed certificates, under the hands and seals of (*two of*) the Commissioners.

Sworn to and subscribed, this day, &c. before Magistrate.

FORMS OF DEEDS, LEASES &C.

167. *Deed of Gift.*

The State South Carolina, }
County. }

THIS INDENTURE, made this day of . one thousand eight hundred and , between A. B., of , in the County and State of merchant [and C. B. his wife], of the first part, and B. B., of the same place, son of the said A. B., physician, of the second part: WITNESSETH, that the said A. B., for and in consideration of the natural love and affection, which he has unto the said B. B, by these presents does give, grant, alien, enfeoff and confirm unto the said B. B., his heirs and assigns, forever, all [*here insert description of the premises*]: TOGETHER with all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right [dower and claim of dower], title, interest, property, claim and demand whatsoever, of the said party [*or*, parties] of the first part, of, in and to the said premises, with the appurtenances, and every part thereof: TO HAVE AND TO HOLD all and singular the above granted premises, with the appurtenances, unto the said B B., his heirs and assigns, forever.

IN WITNESS WHEREOF, the party [*or*, parties] of the first part has [or, have] hereunto set his hand and seal [or, their hands and seals], the day and year above written.

Signed, sealed and delivered }
in presence of } A. B. (Seal.)

[*Signatures of witnesses.*]

168. *Quit Claim Deed.*

KNOW ALL MEN by these presents, that I, A. B., of the city of , in the County of , and State of , farmer [or, we, A. B., of, *etc., as above*, and C, B. his wife], in consideration of dollars to me [or, us] paid by Y. Z., of , merchant, the receipt whereof is hereby acknowledged, have remised, released and quit-claimed, and by these presents do, for myself, my [or, ourselves, our] heirs, executors and administrators, remise, release and forever quit-claim unto the said Y, Z., his heirs and assigns, all right, title, interest [dower and right of dower], property, possession, claim and demand which I [or, as we or either of us] have or ought to have, in or to all] *here insert description of premises*], TO HAVE AND TO HOLD the said premises unto the said Y. Z., his heirs and assigns, to his and their only proper use and behoof forever; so that neither I, the said A. B., or any other person in my name and behalf [or, we, the said A. B. and C. B., or either of us, or any other person in our or either of our names and behalf] shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they, and every of them, shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF. I [or, we] have hereunto set my hand and seal] or, our hands and seals], this day of , in the year one thousand eight hundred and .

Signed, sealed and delivered }
in the presence of } A. B. (Seal.)

169. *Warranty Deed, with Full Covenants.*

THE STATE OF SOUTH CAROLINA.

THIS INDENTURE, made this day of , in the year one thousand eight hundred and , between A. B., of , in the County of , and State of , farmer [and C. B. his wife], of the first part, and Y. Z., of the same place, merchant, of the second part, WITNESSETH: That the said party [or, parties] of the first part, in consideration of the sum of dollars, lawful money of the United States, to him [or, them] paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged: and the said party of the second part, his heirs, executors and administrators, forever, released and discharged from the same by these presents, has [or, have] granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and, by these presents, does [or, do] grant bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all [*here insert description*]; together with all and singular the tenements hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest [dower and right of dower], property, possession, claim and demand whatsoever, both in law and in equity, of the said party [or, parties] of the first part, of, in and to the above-granted premises, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD all and singular the above grantedpremises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever. [*If there is any encumbrance state it thus:* subject, however, to a certain indenture of mortgage for dollars, and dated , 18 , and recorded in the office of , in Liber of Mortgages, at page . and also subject, etc.]

AND THE SAID A. B. [*not naming the wife*], for himself, his heirs, executors and administrators, does covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that the said A. B., at the time of the sealing and delivery of these presents, is lawfully seized in his own right [*or otherwise, as the case may be*], of a good, absolute and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances [*if conveyed subject to encumbrance, say*, subject as aforesaid]; and has good right, full power and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party [or, parties] of the first part, his [or, their] heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same are now free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind soever, [*if conveyed, subject to an encumbrance, say*, except as aforesaid]. And also, that the said party [or, parties] of the first part, and his [or their] heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the above granted premises, by, from, under or in trust for him [or, them], shall and will at any time or times hereafter upon the reasonable request, and at the proper costs and charges in the law of

the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or intended so to be in and to the said party of the second part, his heirs and assigns, as by their counsel, learned in the law, shall be reasonably devised, or required. And the said A. B. [*not naming wife*] and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and, by these presents, forever defend.

IN WITNESS WHEREOF, the said party [or, parties] of the first part has [or, have] hereunto set his hand and seal [or, their hands and seals], the day and year first above written.

Signed, sealed and delivered in the presence of } *Signatures and seals.*
[*Signatures of witnesses.*]

170. *Lease of Real Property.*

State of South Carolina }
County. }

THIS INDENTURE, made this day of , in the year one thousand eight hundred and , between A. B., of , in the County of , and State of , merchant, of the first part, and Y. Z., of , in the said County, farmer, of the second part, WITNESSETH: That the party of the first part has hereby let and rented to the party of the second part, and the party of the second part has hereby hired and taken from the party of the first part [*here insert brief discription of the premises—e. g., thus*]: all those three brick warehouses and premises known as Nos. 9. 11 and 13 King-street, in the City of , with the appurtenances, for the term of years, to commence the day of , 18 , at the yearly rent of dollars, payable in equal quarterly payments on the usual quarterly days [or, on the first days of May, August, November and February], in each year. AND IT IS AGREED that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for said party of the first part to re-enter the said premises, and to remove all persons therefrom [*may add*, the party of the first part hereby waiving any notice to quit or of intention to re enter, under the Statute].

And the said party of the second part covenants to pay to the said party of the first part the said rent, as herein specified, and that at the expiration of the said term, or other determination of this lease, the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted and the said party of the first partcovenants that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

IN WITNESS WHEREOF, the parties hereunto have interchangably set their hands and seals, this day of , one thousand eight hundred and

Signed, sealed and delivered in the presence } [*Signature and seal.*]
[*Signatures of witnesses.*]

171. *Attestation of a Deed in which Erasures or Interlineations Appear.*

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Sealed and delivered in the presence of (the word "five," on the first page, was erased, the words "be the same more or less" written over an erasure; on the second page, the words "or assigns," interlined in three places, and the word "forthwith" cancelled on the third page, before execution). [*Signature and Seal.*]
[*Signatures of witnesses.*]

172. *Statutory Lien on Crop.*

STATE OF SOUTH CAROLINA

Memorandum of Agreement made and entered into this day of Anno Domini eighteen hundred and between W. C. B. and T. D. J., merchants and factors, of the City of ,trading under the name and style of W. C. B., & Co. of the first part; and H. H. W. of County, Planter, of the second part.

Whereas the said W. C. B. & Co., parties of the first part, have already made certain advances in money and supplies, to the said H. H. W., party of the second part, and have, and do hereby agree to continue such advances, to an amount not to exceed in the aggregate the sum of dollars, to enable the said H. H. W. to carry forward the planting and cultivation and harvesting of his crop of Cotton and Rice on his plantation in said County known as on condition that the said H. H. W. will give to the said W. C. B. & Co. a Lien upon the entire Crop of Cotton and Rice raised by him on said plantation during the year 18 to secure the re-payment of the sums advanced by the said W. C. B. & Co. with interest thereon at the rate of per centum per annum in accordance with the provisions of the Act of the General Assembly of this State entitled "An Act to secure Advances for Agricultural purposes" ratified September 20th, 1866. Now know all men that I, H. H. W., party of the second part, in consideration of the premises, to wit: the advances already made and those to be made by the said W. C. B. & Co., the party of the first part to me, the said party of the second part, in manner and form as aforesaid, have given, and do hereby give to the said W. C. B. & Co. a lien upon the ENTIRE crop raised upon the plantation during this year, in the cultivation of which the entire sum of the advances so made by said W. C. B. & Co. shall be expended, such lien to have preference and precedence over all other liens and incumbrances whatsoever, existing, or otherwise, to the full extent of such advances and the interest thereon as aforesaid, in accordance with the terms of the Act of the General Assembly of this State, ratified on the 20th day of September, A. D. 1866, entitled "An

Act to secure Advances for Agricultural purposes" and subject to all the provisions and conditions of said Act. And I do further agree to send to the said W. C. B. & Co. for sale on commission my entire Crop of Cotton and Rice (except such part thereof as may be retained for the use of my family) as soon as said crops can be harvested and prepared for market; and to allow and pay the said W. C. B. & Co. the usual commission on sales, with ordinary costs and expenses.

In witness whereof the said parties have interchangably hereunto set their hands and seals on the day and year first above mentioned.

Signed, sealed and delivered in presence of M. T. — W. C. B. & Co. [L. S.] by T. D. J. H. H. W. [L. S.]

South Carolina, County. Personally appeared before me T. M. and made oath that he saw the within named W. C. B. & Co. and H. H. W. sign, seal, and as their act and deed deliver the foregoing (or within lien), and that he attested the execution thereof as a subscribing witness.

Sworn before me, this day of 18
H. J. C. C. P.

In executing a lien of this kind it often becomes necessary to make two probates—the parties residing in different Counties and not meeting to transact the business; in which case after "T. M." should be added witness to signature of W. C. B. & Co., and S. L. witness to signature of H. H. W., and below the additional probate. And all these forms of Deeds, Leases or Liens *must* be proved before an Officer qualified to take acknowedgments and probate, to render them valid, or to enable the Register to record them.

173. *Deed with Warranty.*

STATE OF SOUTH CAROLINA:

KNOW ALL MEN by these presents, that I, A. B., of , in the State aforesaid [farmer], in consideration of , to me paid by Y. Z., in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Y. Z., all that [*here describe the land*] together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appurtenant: TO HAVE AND TO HOLD all and singular the premises before mentioned, unto the said Y. Z., his heirs and assigns, forever. AND I DO HEREBY bind myself, and heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Y. Z., his heirs and assigns, against myself, my heirs, and against every person whomever lawfully claiming, or to claim the same, or any part thereof. (*j*)

WITNESS my hand and seal, this day of , in the year of our Lord one thousand eight hundred and , and in the year of the Independence of the United States of America.

Signed, sealed and delivered in the presence of [*Signatures of two witnesses.*] — [*Signature and seal.*]

(*j*) This is held to imply all the five covenants; seizin, right to convey, quiet enjoyment, free from encumbrances, and in effect also further assurance. Jones v. Glenn, 9. Rich. 371.

174. *Abstract of Title.*

ABSTRACT OF THE TITLE
of
G. W G.

To premises lying and being in Beaufort County, in the State of South Carolina, and described as follows:

That plantation of land containing one thousand acres, lying on both sides of Coosawhatchie Swamp, and long known as "Walkill Tract." This parcel of land is a part of what anciently embraced some 5000 acres and was known together as "Scott's Reserve," but the Walkill Tract was resurveyed and set off as early as 1790, and conveyed by the then owner, an ancestor of the Goethe family, to J. M. M. who on the 20th March 1816, conveyed the same to F. P. from whom the present tittle is deduced.

I.

J. M. M., and T. M., his wife to F. P.	Deed dated 20th of March 1816. Recorded in Book 32, page 400. Condition, $5000.

Conveys all that plantation containing 1000 acres, lying on both sides of Coosawhatchie Swamp in Beaufort County, bounded north by the Orangeburgh post road, east by lands of estate of B. M. B., south by lands of A. B. A., and west by lands supposed to belong to estate of Dawson. Warranty against grantors only. Deed duly proved, and dower separately relinquished.

II.

F. P. with G. H., and J. K..	Agreement for sale of premises, dated 5th June 1840. Recorded in Book 51, page 27. Condition $7,200.

Agrees to convey same premises, to wit: Walkill Tract, with same discription, except that south bounding is the estate of A. B. A.

F. P. died before the agreement was carried into effect, leaving six minor children, but no widow, to wit: James, Eliza, William, Emily, Charles and Charlotte.

M. P., on the 8th September, 1840, appointed guardian of the six minor children of F P.

On the 15th Jannary 1841, the Court of Chancery order M. P. guardian of said minors, to convey the said property in their behalf to G. H. and J. K., pursuant to agreement.

III.

James, Eliza, William, Emily, Charles and Charlotte. by M. P., their guardian to G. H. and J. K.	Deed, dated 20th July 1841, Recorded 1st August 1841, in Book 56, page 139.

Recites agreement of 5th Jnne 1840, death of F. P., appointment of M. P., as guardian, and the order of the Court above mentioned, and in consideration of the premises, conveys the premises, by the same description as in No. 2. No covenants.

IV.

Will of J. K.	Dated February 5th 1843. Proved October 20th 1843. Recorded in Book 10, of wills, page 300.

Devises all of the real property of J. K., the testator, mentioning among other lands one undivided half interest in the lands known as the Walkill Tract, unto A. L. and B. K., his executors, in trust to sell the same, and with the proceeds to defray certain debts and legacies.

It appears that the wife of J. K., Annette, died a year or two previous to his death.

V.

G. H. and Mary his wife and A. L. and B. K. Executors of J. K., to S. T.	Deed dated April 18th 1864. Recorded April 27th 1864, in Book 63, page 521. Condition, $3,000.

Conveys all that portion of the Walkill Tract, lying on the northerly side of the Coosawhatchie Swamp, containing 513 acres more or less, bounded north by the Orangeburg post-road, east by lands of estate of B. M. B., south by the said Swamp, dividing the said tract nearly into equal portions, and west by lands of Dawson. Full covenants against grantors, and Mary the wife of G. H. separately examined.

VI.

G. H. and Mary his wife and A. L. and B. K., Executor of J. K., to B. C.	Deed dated April 18th 1864. Recorded April 28th 1864, in Book 63, page 527. Condition $11,500.

This conveys all the southern portion of the Walkill Tract containing 487 acres, more or less, and described as above, with convenants as in last named deed, and separate relinquishment of dower by Mary wife of G. H.

VII.

S. T. to A. C. Trustee of marriage Settlement of B. C.	Deed dated 1st May 1872. Recorded May 10th 1872, in Book 75, page 29.

Conveys to A. C. Trustee of the marriage settlement of B. C., the owner of the southerly half of Walkill Tract, the northerly half, and thus unites the several portions into one with the same boundaries as in the first conveyance from J. M. M. and J. M., to F. P.

VIII.

S. T. and wife B. T., and Trustee A. C. to G. W. G.	Deed dated January 1st 1873. Recorded in Book 81, page 371, January 10th 1873.

Recites the marriage settlement last mentioned, and gives same original boundaries, with full warranty.

Now on examination of the various transfers above mentioned, and the searches annexed, I am of the opinion that G. W. G., is seized of a good estate in fee-simple in the premises in question.

(Date.) (*Signature of Counsel.*)

(Here should follow the official certificate of the Register of Deeds, County Clerk or other officer, showing the premises to be free and clear of all incumbrance, except such as may be disclosed in the abstract.)

CLERK AS COMMISSIONER OF LOCATIONS.

175. *Warrant of Survey.*

STATE OF SOUTH CAROLINA, County. } Office of the Commissioner of Locations.

H. J., Clerk of the Court of Common Pleas and General Sessions, as Commissioner of Locations for the County aforesaid:

To G. R., or some other lawful Deputy Surveyor for the said County.

You are hereby authorized and required, with proper attention to the instructions of the Surveyor General, to lay off and to locate unto C. D., a tract of vacant land within the County aforesaid, which has been entered by him, and will be shewn to you in his behalf: And to return this warrant, when executed, together with a true and correct plat of the survey you may make under it, certified by you, into this office within two calendar months from the date thereof.

Given under my hand and seal of office, at this day of, &c.

The Deputy Surveyor returns his plat as follows:

In pursuance of a warrant from H. J., &c., granted to C. D., on day of , I have laid off and located to the said C. D. a tract of land, containing acres, situate, &c., and having such shape, marks, buttings and boundings as are represented by the annexed plat.

Surveyed day G. R., Deputy Surveyor.

The Commissioner records the warrant in one book, and the return and plat in another, and, if the fees are paid, transmits the original plat to the Surveyor General's Office, within three months from its delivery to him—having first endorsed on the said plat, as follows:

Recorded day 18 , in Book A., page 120, and certified for C. D.
H. J., Clerk, & Commissioner of Locations.

176. *Elapsed lands: In the Location Office.*

When the limited time has elapsed—six months from survey—and land located has not after return to the Commissioners, been passed through the Location Office by payment of the fees, the Commissioner may certify the survey for any person who will apply for it and pay the fees. This is done by writing on the original plat thus:

I certify for G. H., the within survey made for A. B., and now elapsed.

H. J., Clerk, & Commissioner of Locations.

In like manner, under Act 1785, 4 Stat. 710, after six months elapsed from the survey, and no grant obtained, any person may obtain a grant by paying the fees, if the plat be in the Surveyor General's Office; or by obtaining a copy of the plat for the Location Office, if the original plat has passed through that office, and not transmitted to the Surveyor General. Upon the copy the Commissioner should (after exact copy of the Surveyor's return, and of the certificate of recording,) endorse:

A true copy from my book Certified this day of for G. H., who applies for it, as a survey of the elapsed land.

H. J., Clerk and Commissioner of Locations.

177. *Notice to owners of lands through which right of way is required.*

STATE OF SOUTH CAROLINA, }
County. } In the Court of Common Pleas.

To X. Y. Z.

Please take notice, that the Railroad Company, a corporation having a charter to construct a railroad through the said County, have duly filed their petition in writing before the Honorable J. J. M., Circuit Judge, praying for the empannelling of a jury to ascertain the amount which shall be paid as just compensation for the right of way through certain lands owned and occupied by you, and on hearing the said petition, and on motion of W. V., Esq., Attorney for Petitioners, the said Judge has ordered the Clerk of the Court to empanel a jury of twelve to ascertain the compensation for the land required: Therefore on Monday the day next, the said Clerk will, upon the spot designated in said petition and order proceed to empanel the said jury, for the purpose of examining the said lands, and ascertaining the compensation to be made for the right of way over the same.

Witness H. J., Clerk of the said Court at the day of A. D. 18 .

(Seal.) H. J., Clerk.

See Gen. Stat., 324, 325, for manner of proceeding in case of appeal from award of Jury.

CERTIFICATES AND AUTHENTICATION OF RECORDS.

Exemplification of a record, or other judicial proceeding, authenticated by certificates of Clerk and Judge, under Act of Congress 1790.

178. *Clerk's Certificate.*

THE STATE OF SOUTH CAROLINA, }
County. }

I, H. J., Clerk of the Court of Common Pleas and General Sessions, for County, in the State aforesaid, do hereby certify, that the writing hereunto annexed, consisting of pages, doth contain a full and true exemplification of all the proceedings had in the Court aforesaid, in a certain case wherein A. B. was plaintiff and C. D., defendant, as appears by the original records remaining in my office.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, at on the day of in the year of our Lord one thousand, &c., and in the year of the Sovereignty and Independence of the United States of America.

H. J., C. C. P. & G. S.

179. *Judge's Certificate.*

Which the Clerk should write, except the name and date.

THE STATE OF SOUTH CAROLINA.

I, J. M. M. one of the Judges of the said State, and presiding Judge of the Court of Common Pleas and General Sessions for County, in the said State, do hereby certify, that H. J., Esq., whose attestation is above written, (as appears by his name in his own hand-writing, and under his seal of office thereunto affixed,) was, at the date thereof, Clerk of the said Court for County aforesaid; that all due faith should be given to his official attestations as such Clerk, and that the said attestation is in due form, and by the proper officer.

Given under my hand at this day of J. M. M.

180. *Authentication of records and copies from office books, which records and books are kept in a public office, not appertaining to a Court; as Register of Mesne Conveyance in Charleston, &c., &c.*

There should be, 1st. the attestation of the Officer who keeps the record or office book, under his seal of office, if there be any such seal; and if there be no such seal, a statement of that fact. 2nd. A certificate of the Governor, the Secretary of State, or Keeper of the Great Seal, that the attestation is in due form and by the proper officer.

Instead of the last, there may be a certificate of the presiding Judge of the County in which the office is kept, followed by the certificate of the Clerk, under his hand and seal of office, that the Judge is duly commissioned and qualified. Thus:

Judge's Certificate.

THE STATE OF SOUTH CAROLINA.

I, , one of the law Judges of the said State, and presiding Judge of the Court of Common Pleas and General Sessions for County, in the said State, (in which County the office of *Register of Mesne Conveyance for County* is kept,) do hereby certify, that M. K., Esq., whose attestation under his hand [and seal of office] immediately precedes this by certificate, was at the date thereof, *Register of Mesne Conveyances for County* aforesaid, [and keeper of the records, books and papers which formerly appertained to the office of *Register for the Province of South Carolina,* which latter office has been superseded (*abolished*;) that all due faith and credit should be given to his official attestations; [that there is no seal belonging to his office;] and that the preceding attestation is in due form and by the proper officer.

Given under my hand, &c. J. M. M.

181. *Clerk's Certificate.*

THE STATE OF SOUTH CAROLINA, }
County. }

I, H. J., Clerk of the Court of Common Pleas and General Sessions for County, in the State aforesaid, (in which County the office of is

kept,) do hereby certify, that the Honorable , whose signature in his own hand-writing is subscribed to the preceding certificate, was at the date thereof one of the Law Judges of the said State, and a presiding Judge of the Court aforesaid, for the County aforesaid, duly commissioned and qualified.

In testimony whereof, &c., (*as in No.* 178.)

182. *Authentication of a Trial Justice's Attestation.*

Clerk's Certificate.

THE STATE OF SOUTH CAROLINA, }
County. }

I, H. J., Clerk of the Court of Common Pleas and General Sessions for County, in the State aforesaid, do hereby certify, that E. F., Esq., before whom the preceding affidavit was made (as appears by his name in his own hand-writing attesting the same,) was at the date thereof a Trial Justice for the County aforesaid, [who had been duly appointed and qualified and had signed the roll kept according to law in my office.]

In testimony whereof, I have hereunto set my hand and seal of office, at, &c., (*as in No.* 178.)

The Judge's certificate should be like No. 179, except that the Clerk's should be called a *certificate* instead of an *attestation*: And that it may be advisable to add:

That, according to the laws of this State, a Trial Justice is authorized to administer an oath, [and to take the probate of deeds,] and the roll of Trial Justices for his County is kept by the Clerk of the Court of Common Pleas and General Sessions.

183. *Certificate of a Clerk to Acknowledgment taken according to the Laws of another State.*

STATE OF }
County of } ss.

I, , Clerk of the Court, a Court of record of said State of , in and for said County of , do hereby certify that , the person before whom the foregoing acknowledgment [*or.* proof] was taken, was at the time, thereof [*here state title*], duly commissioned and sworn, and to all whose official acts as such, full faith and credence is given, and that his signature to the foregoing certificate of acknowledgment [*or*, proof] is genuine, and that the within [*or*, annexed] deed [*or other instrument*] is executed and acknowledged according to the laws of the said State of .

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this day of , 18 .

[*Seal of Court.*] [*Signature*], *Clerk.*

184. *Certificate by Clerk, ex officio, Register of Mesne Conveyances, as to a copy from the Registry.*

Clerk of the Court of Common Pleas and General Sessions, and Register of Mesne Conveyances for the County of in the State aforesaid, hereby certify, that, &c., contains a true copy of a certains (mortgage) from C. D. to A. B., recorded in the Register's Office aforesaid, as appears by the book in which the same was registered, remaining in my office.

In testimony, &c. (*See No.* 178.)

185. *Certificate by Clerk, Register of Mesne Conveyances, that no paper has been registered.*

certify, that no mortgage from C. D. to A. B. of a tract of land called Black Hill, (situate, &c.,) or any part thereof, has been registered in my office, [*or*, that no registry of a deed from, &c., can be found in my office.]

186. *Certificate by Clerk, as Commissioner of Locations.*

Clerk and Commissioner of Locations for the said County, certify, that the annexed plat is truly copied from Book A. page 120, in which book, belonging to the said office of Commissioner of Locations, are recorded plats returned to the said office under warrants of survey.

187. *Certificate of Clerk, as Judge of Probate.*

ex officio, discharging the duties of Probate Judge for the said County, during a vacancy in the office of the said Judge of Probate, certify, that, &c., [*or, ex officio*, Judge of Probate as to the estate of E. F., deceased, of which C. D., Probate Judge of the County aforesaid, is administrator, certify that, &c.]

188. *Judge's certificate as to either of the six certificates last preceding.*

[*As in No.* 178.) was at the date thereof, Clerk of the said Court for County, and *ex officio*, Keeper, &c., Register &c., Commissioner &c., Judge of Probate &c., (*according to the description in the Clerk's certificate*;) that all due credit should be given to his official attestation as such Clerk and Keeper, &c., Register &c., and that the said attestation is in due form, and by the proper officer.

Given under my hand, &c. J. M. M.

189. *Clerk's Certificate of Judgments and Decrees or Mortgages.*

T. D., Plaintiff.
v.
R. D., Defendant. } Judgment in Com. Pleas. County.

Dated 18 $ Costs $

R. D.
to
A. B. } Mortgage of "Beaconfield",
to secure bond of $10,000.
Dated 18

State of South Carolina, } Office Court Com. Pleas, and Registry Mesne
County. } Conveyance.

I, H. J., Clerk of the Court Common Pleas and *Ex officio* Register of Deeds in and for the County and State aforesaid, do hereby certify, that I have examined the Indexes of Judgments and Decrees, and also of Mortgages in my office, and find none existing and unsatisfied against R. D. save and except those herein above specified and set forth.

In testimony whereof I have hereunto set my hand and official seal at the day of A. D. 18

[Seal.]

H. J., C. C. P., *Ex. off.* R. M. C.

190. *Certificate to copy of paper on file.*

THE STATE OF SOUTH CAROLINA,
County of ,
Clerk's Office, , 18 . } ss.

I DO HEREBY CERTIFY that I have compared the foregoing copy of a [*naming the instrument*], [and of the endorsements thereupon], with the originals now remaining on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

IN TESTIMONY WHEREOF, I have hereunto set my hand and [*Official seal*] affixed my official seal, this day of , in the year one thousand eight hundred and .

[*Signature and title of officer.*]

191. *Certificate to Copy of Record.*

STATE OF SOUTH CAROLINA,
Secretary's Office. } ss.

I HAVE compared the preceding with a certain indenture recorded in the office, in Book of Deeds, No. , page , etc., and do certify that the same is a correct transcript therefrom and of the whole of said indenture. [*Here note any alterations in the manuscript, if any there be—e. g., thus:* One line interlined at the top of page 2, before making this certificate.]

IN TESTIMONY WHEREOF. I have hereunto affixed the seal of this office,
[*Official*] at the city of Columbia, the day of , in the year one
[*seal.*] thousand eight hundred and .

[*Signature and title of officer.*]

192. *Certificate of official Character.*

STATE OF SOUTH CAROLINA,
County of . } ss.

I, H. J., Clerk of the said County, do hereby certify that O. P., the person subscribing the foregoing [*here designate the instrument*], and before whom the same was taken, was, on the day of , 18 , therein mentioned, a Judge of the Court of , a Court of record of the said County of [*or other officer, as the case may be*], and that I am well acquainted with the hand-writing of the said O. P., and verily believe that his name subscribed to the said certificate is his proper and genuine signature.

[*Attestation, signature, etc., as in preceding form.*]

193. *Deputation of Deputy Clerk or Register.*

STATE OF SOUTH CAROLINA,
County. }

I, H. J., Clerk of Court, and Register of Deeds for the County aforesaid, do hereby constitute and appoint E. P. J. my regular Deputy, to act, do and perform whatever duty pertaining to my said office of Clerk of Court, or Register of Deeds, may lawfully be done or performed by said Deputy: this appointment to hold and be of force during our mutual pleasure, and until it shall be duly and formaly revoked.

In witness whereof, I have hereunto set my hand and seal, this day of 18

In the presence of } H. J, [L. S.]

194. *Writ of Certiorari.*

THE UNITED STATES OF AMERICA,

To the Judge of the Court of Common Pleas for the County of , South Carolina, Greeting:

We, for certain reasons being desirous that our Circuit Court of the United States for the District of South Carolina, in the Fourth Circuit shall be certified of a certain cause commenced before you against Defendant, by Plaintiff; Do therefore command you that the records and proceedings in the said cause, you distinctly and openly send to the said Circuit Court, at the city of Charleston (or Columbia,) on the first Monday of April 18 , as fully and amply as the same are remaining before you, by whatsoever name the parties may be called therein, together with this writ, that our said Court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this day of A. D. 18 .

D. F. } D. H., C. C. C. U. S.,
U. S. Atty. } for So. Ca.

Return to the foregoing Writ.

THE STATE OF SOUTH CAROLINA, }
County. }

The answer of the Judge of the Court of Common Pleas in and for the County of within named, a transcript of the record whereof mention is within made, with all things touching or in anywise concerning the same, we certify under the seal of our said Court to the Justices of the United States Circuit Court, within mentioned, in a certain schedule to this writ annexed, as within is commanded.

By the Court.
(*Seal.*) H. J., Clerk.

Annex a complete schedule of all the papers filed in the case—as—1, Summons for relief,—2, Complaint for trespass,—3, Answer of defendant—4, Demurrer—5, Replication—6, Issue,

SHERIFF.

195. *Deputation of a regular Deputy.*

STATE OF SOUTH CAROLINA, }
County. }

I, W. W., Sheriff of the County aforesaid, do hereby constitute and appoint C. D. my regular Deputy, to act, do and execute what to the office of Deputy Sheriff shall belong or appertain: during our mutual pleasure.

In witness whereof, I have hereunto set my hand and seal, this day of A. D. 18

In presence of } W. W., [L. S.]
}

See 8th Sec. of Sheriff's Act of 1839, 11 Stat. 28. for the distinctions between regular Deputy for whom the Sheriff is responsible, and the bailiff or special Deputy for w om the Sheriff is not responsible to the party at whose request he was appointed: (Stone v. Chambers, 1 Strob. 117; also, for the oaths to be endorsed on the deputation. The deputation and oaths are required to be read in open Court, and recorded in the Journal of the Court.

The appointment of a Jailor should be in writing, deposited in the Clerk's office. 41 Sec. Sheriff's Act, 1839, 11 Stat. 33.

A Deputy Sheriff is one of the various civil officers, who are, by the Act of 1816, (6 Stat. 27, required to take an oath to enforce the Act against gaming, "before they be qualified to act in their respective offices." See oath, page 107.

The covenants between the Sheriff and his regular Deputy, respecting compensation, indemnity, limitation of powers, &c., will be binding *inter esse*, and should be expressed in a suitable instrument. 2 Hill 647.

196. *Deputation of a special Deputy, for whom the Sheriff is responsible.*

THE STATE OF SOUTH CAROLINA, }
County. }

I, W. W., Sheriff of the County aforesaid, do hereby constitute and appoint C. D my special Deputy,

to execute this writ,—*or*,

to levy upon and seize a certain horse named of the property of E. F., under a Fi Fa. in the case of G. H. against the said E. F.,—*or*,

to serve all mesne process (bail writs excepted,) which may be handed to him before the next Court of Common Pleas for this County,—*or*,

to do all acts appertaining to the office of Deputy Sheriff, until the next return day for this County,—*or*,

to discharge the duties of a Deputy Sheriff within Parish, part of my County, until K. L., my regular Deputy, shall return from New York.

Witness my hand and seal, this day of A. D. 18

Done in presence of }
} W. W, [L. S.]

These instances will serve to shew how the exigency requiring the appointment, or the special limitation with which it is made, should be expressed in the deputation If only a single writ, or other paper, is to be executed by the special deputy, the deputation should properly be written on it.

197. *Deputation of a special Deputy, appointed at the request of a party, his agent or attorney, which case is exempted from the ordinary responsibility of a Sheriff.*

A....B....,
v.
C....D.....

In the Common Pleas. County
Ca. Sa. lodged in my office, day of *or,*
Bail writ in assumptit, entered in my office day of

At the request of (*"party his agent, or attorney,"*) I hereby deputize E. F., to execute this writ, at the risk of the said (*party.*)

Witness my hand and seal, this day of

Done in presence of

W. W. [L. S.]

SHERIFF'S RETURNS.

198. *Personal service &c.*

In my own person, (*or,* By my regular Deputy A. B., *or,* By my special Deputy C. D.,) I did on the day of 18 *deliver to the defendant a copy of this writ, with a proper notice thereon endorsed.

I swear to the truth of this return.

A. B., or, C. D., (who actually served the writ.)

Service proved before me,

H. J., Clerk.

199. *Service of writ by copy left.*

(*As in No.* 198 *to*—*) leave at the most notorious place of residence of the defendant a copy of this writ with a proper notice thereon endorsed.

I swear to the truth of this return.

W. W., Sheriff.

200. *Arrest under order for Bail.*

(*As in No.* 198 *to*—*) take the within named C. D. in my County, and did forthwith deliver to him a copy of the within process (order, or writ) † and his body I now hold in custody.

Sworn to before me, this day of 18

W. W. Sheriff.

H. J., Clerk.

201. *Bail given.*

(*As in No.* 200 *to*—†) And him I safely kept—‡ until he gave me bail according to law.

W. W., Sheriff.

202. *Discharged on Supersedeas.*

(*As in No.* 201 *to*—‡) until afterward, to wit, on day of by virtue of a writ, (or, order) to this return annexed, I caused the said C. D., to be delivered out of custody, wherefore, I have not his body as within required.

W. W. Sheriff.

203. *Discharged by order of the Plaintiff.*

(*As in No* 201 *to*—‡) until afterwards, to wit, on day of by the within order of the plaintiff, (hereunto annexed,) I discharged him from custody.

204. *Two or more Defendants.*

When there are two or more defendants, if the same Sheriff or Deputy has served more than one, he can unite in one return the particulars as to those he has served; but it is better that there should be a separate return and oath as to any one or more defendants who have been served by a different officer.

The service of one or more, and of the following excuses, tarde, languidus, rescue, injunction, &c. (*Nos* 207—211,) as to one or more who have not been served, may also be united in one return.

205. *Service of Mesne Process upon one of several partners, under Act of* 1792.

In person (or By, &c.) *see No.* 198,) on the day of I delivered &c. (or left, &c. the within named C. D., one of the partners of the within named firm of D. F. & H.: the within named E. F., and the within named G. H., are not to be found within my County; nor is either of the said last mentioned persons, or any other partner of the firm aforesaid known to me to be within, or to reside in, this State.

In cases of joint contract under the Act of 1823, 6 Stat. 212, only the contractors within the State should be sued: the plaintiff stating in his declaration and proving on the trial the residence of the others abroad.

206. *Non est inventus.*

(For a Ca. Sa., bail writ, or any order requiring arrest, omit the latter clause.)

The within named is not to be found within my County, [nor has he therein any place of residence.]

207. *Tarde: for process mesne or final.*

This writ (or, process) came to my hands so late, that it could not be served (or, executed.)

208. *Languidus: for bail process or Ca. Sa.*

In person [or, By, &c. *see No.* 198,] on day of I proceeded to , where the within named was, in order to arrest him: and then and there found the said so sick, weak and infirm, that, without danger to his life, he could not be removed: and in the same condition, he hath ever since been, and still remains, so that I cannot have his body as required.

209. *Languidus and non est inventus.*

By virtue of this writ, I, in person [or, By, &c. *see No.* 198,] did on the day of last, at a certain dwelling house of one R. T. in my County, take the body of the within named C. D.: she, the said C. D., having been, on the day of aforesaid, brought to bed of a child, and then being so ill, weak and diseased therewith, that I could not remove her from the room in which she was lying, without the greatest peril of her life: Wherefore, I, from necessity of the above circumstance, and for fear of occasioning her death in case I continued her in my custody, immediately relinquished the custody of the body of her the said C. D., and afterwards, and so soon as it might be supposed she was so far recovered of her illness, weakness, and disease, as to be able to be removed without danger to her life, to wit, on the day of last, I went again in person, [or

By, &c.] to the said house and room for the purpose of taking her into my custody, in execution of this writ, and she was not there, or ever after found there or in my County: for which reason, I cannot have the body of the said C. D. as within required.

210. *Rescue and non est inventus.*

In person [or, By, &c. *see* No. 198,] on the day of A. D, within my County, I took and arrested the within named C. D., and him safely kept, until J. K. of and divers other persons to me [or, my Deputy aforesaid,] unknown, on the day of aforesaid, with force and arms assaulted and ill-treated me [or, my Deputy aforesaid,] and the said C. D., out of the custody of me (*or*, my Deputy aforesaid) then and there rescued: and the said C. D., then and there rescued himself, and escaped out of the custody of me [or, my Deputy aforesaid,] against the peace and dignity of the State: and afterwards, the said C. D. is not to be found in my County.

211. *Injunction: stayed process—mesne or final.*

I was ready to do as within commanded: but, on the day of , received a copy of an injunction [or, notice of an injunction,] ordered by the Court of Equity for County, in the case of complainant, against defendants, whereby I was enjoined from further proceeding in this matter: and therefore, I have not proceeded.

212. *Return of personal service of Summons.*

A. B. } STATE OF SOUTH CAROLINA.
v.
C. D. } County

I hereby certify that on the day of 1873, at I served on the above named C. D. the within summons in this action, by delivering a copy thereof to him personally, and leaving the same with him.

W. W., Sheriff.

213. *Privilege of a member of the Legislature.*

The within named is a member of the Senate, (*or*, House of Representatives) of the General Assembly of this State, and served in the General Assembly which met at Columbia on —*: so that at the time of the delivery of this writ (*or*, process) to me, and from thence continually, he hath been under the Constitution of this State protected in his person and estate, and therefore, could not execute this writ (*or*, serve this process) against him.

214. *Privilege of a member and N. E. I.*

(*As in* No. 213 *to*—*) so that, from the time he came into my county, after the delivery of this writ to me, until he left my county, to-wit, on the day of he hath been under the Constitution, &c. (*as in* No. 213 *down to* 'him.' *then say*) and after the said last mentioned day he hath not been found within my county.

215. *Privilege of a suitor or witness in Court.*

The within named , at the time of the delivery of this writ, (or process,) to me was, and from thence continually hath been, a suitor (or witness) in a certain cause which was depending in the Court of Common Pleas for this County, between A. B. Plaintiff, and Q. R. Defendant, and as such suitor, (or witness) was going to, attending on, or returning from the said Court, so that I could not arrest him as required.

216. *Service of Subpœna writ.*

In my own person, [or, by, &c. *see No.* 198,] on the day of , I exhibited this writ and delivered a subpœna ticket conformable thereto to the within named O. P. R.

Non est inventus as to another.

The within named T. M. is not to be found within my County.

SCIRE FACIAS.

217. *Return of Nihil.*

The within named C. D. hath nothing within my County by which I can cause him to be summoned; neither is he to be found in the same.

218. *Service of Scire Facias by delivery.*

In my person [*or*, By, &c., *see No.* 198,] I delivered a copy of this writ to the within named C. D.

219. *Service by copy posted, of Rule or Scire Facias to revive proceedings.*

The within named E. F. has, since the delivery of this writ to me, been continually absent from and without the limits of this State; and on I, in my own person [or, By, &c.,] posted a copy of this writ upon the door of the Court-house of this my County, wherein the said E. F. had his last residence within this State.

220. *Service of Mesne Process on Corporation.*

Delivery to President.

In person [or By, &c., *see No.* 198,] I delivered a copy of this process [*or*, writ with a proper notice thereon endorsed,] to K. L., President of the , the corporate body within named.

221. *Copy delivered to Clerk at place of business.*

In person [*or*, By, &c., *see No.* 198,] at the , the principal place of business of the within named corporate body, delivered a copy of this process [*or*, writ with a proper notice endorsed thereon,] to M. N. the Cashier [*or*, Clerk] of the said corporate body.

RETURNS. FIERI FACIAS.

NOTE.—A Fi. Fa. creates a lien throughout the State. 3 McC. 241; Rice 150. The Sheriff cannot convey to a purchaser a good title, under an execution which has been in fact paid, although it remains unsatisfied on its face: but the Sheriff will not be a trespasser for acting under it. 1 Rich. 13; see 1 Speer 408; 2 McMul. 335. As to Fi. Fa. under injunction, see 1 Rich, 145; 1 Bill 69; Harp. 457. Concerning the renewal of a Fi. Fa., see Act of 1827, 6 Stat. 324; 12th Rule of Court, and cases there cited. The death of the defendant within the time limited for renewal, does not prevent the renewal. 1 Speer. 346. A Fi. Fa. may be renewed by a Ca. Sa., or Ca. Sa. by a Fi Fa Robertson v. Shannon, 2 Strob. Sec. 314, page 593, Gen, Stat.

222. *Nulla Bona.*

The within named C. D. hath not any goods or chattels, lands, tenements, or hereditaments within my County, whereof I can levy as within commanded.

223. *Nulla bona to Fi. Fa. de bonis testatoris, si non de bonis propriis.*

The within named C. D. hath not within my County, any goods, chattels, lands tenements or hereditaments, which were of the said E. F., whereof I can levy as within commanded; nor hath he, the said C. D., any of his own proper goods or chattels, lands, tenements, hereditaments, whereof I can levy the costs, or any part thereof, as within commanded

124. *Payment by defendant in full.*

The within named C. D., hath paid to me the full amount of the (debt) damages, costs and charges within mentioned.

225. *Payment by defendant, specially applicable to this case: There being older liens.*

The within named C. D., on day of , paid to me a sum of money sufficient to cover the full amount of the (debt) damages, costs and charges within mentioned, (to wit, the sum of dollars,) which according to his special directions (in writing hereunto annexed) I have applied to the satisfaction of this case in preference to older liens.

226. *Levy upon Lands, goods, &c.*

Money in Sheriff's hands is subject to levy, not to lien, may be applied by the Sheriff to execution against the plaintiff for whom it was collected, but is not applied by the law, and if assigned before application, the assignee will take it. 2 Rich. 4, 102, 328; 1 Bail. 40; McMul. 310; 2 N. & McC. 341.

As to the Sheriff's right to the proceeds of a sale made by a Constable, see Alexander v. Collins, 2 Rice. 62, and cases cited.

An undivided residuary interest in personal property, is not subject to levy and sale: nor any interest in such property which cannot be taken into possession by the Sheriff, and delivered to the purchaser. Dargan & Bradford v. Richardson, Dud. 62. Nor under an execution against an overseer, who is to receive part of a crop, before it be severed and delivered. Rogers v. Collins, 2 Bail. 581. Nor any merely equitable interest, as land held under a bond for titles; although what is here improperly called, the equity of redemption in mortgaged lands, may be sold under execution against the mortgagor, subject to the mortgage, it being a legal estate. 4 McC. 336. see 1731, 5 Stat. 169: 1797, 5 Stat. 311. Nor the articles exempted by Act of 1823, 6 Stat. 214, or by the militia law of 1841, 11 Stat. 219: see 3 McC. 352; 3 Rich, 180. Nor goods in the custody of the law, as those actually distrained (even those replevied are liable to the *retorno habendo* in preference over other Fi Fas., 1 McC. 195; but several Fi. Fas. or a Fi. Fa. and an attachment, may successively be levied upon the same goods, and will have priority according to dates. 1 McMul. 93

By virtue of this writ, I levied upon property of the within named C.D., to wit, in my own person, on , I levied upon a house and lot No. 6, Bond-street; in the town of Z., then occupied by O P.

By my regular Deputy, M. N., on I levied upon tract of land in this County, on both sides of the public road from bridge to church, whereon the said C. D. then lived, supposed to contain acres.

By my regular Deputy R. T., on , I levied upon the equity of redemption, or other interest of the said C. D., in another tract of land, supposed to contain acres, then unoccupied, whereon O. K. once lived, and which is said to have been mortgrged by the said C. D. to L. P., before the entry of judgment in this case.

And also upon another tract, adjoining or near to the one last mentioned, supposed to contain acres, which was conveyed to the said C. D. by H, L., bounded on one part by creek :

Also, upon the undivided share of the said C. D., in a tract of land, supposed to contain acres, whereon his father, T. D., formerly lived.

Also, the interest in remainder, which the said C. D. is entitled to, in a tract of land on, or near river, whereon his mother N. D. then lived.

Also, upon a black horse, and on , upon the various articles mentioned in a schedule hereunto annexed.

And on , upon the various articles mentioned in a schedule which is annexed to a Fi. Fa. in the case of E. F. against the said C. D., which was lodged in my office.

W. W. Sheriff.

227. *Account of Sales.*

The sales should be all carefully entered in the book of sales. See § 6 Sheriff's Act of 1839, 11 Stat. 17; Christie v. Simpson, 1 Rich. 409 Elfe v. Gadsden, 2 Rich. 373; 2 N. & McC. 563.

Of lands and chattels, especially lands, it would be serviceable to purchasers if a summary statement of sale was made on the Fi. Fa., thus :

I sold of the foregoing levy, to wit : The house and lot to P. T. for one thousand dollars ; titles delivered to him. The tract on the public road, where C. D. lived, called , to G. H., for two thousand dollars ; titles delivered (by written order of the said G. H.,) to K. R. The other articles to various purchasers. *Vide.* Sale Book-——.

228. *Proceeds of Sales disposed of.*

Of the proceeds of sale, after satisfaction [from the sales of the lands, of a judgment recovered in County by E. F., against the said C. D., having a lien older than the lien of this Fi Fa. and] of various writs of Fi. Fa. against the said C. D., having lien prior to this, I have applied a residue of dollars towards the satisfaction of this Fi. Fa.

Of the proceeds of sale, I have applied a sufficient sum to satisfy this Fi Fa.

W. W., Sheriff.

A presumption of satisfaction arises from a levy, until the disposition of it be shown. The Sheriff should be very careful to shew, that a levy, which has not produced satisfaction, has been disposed of, lest the plaintiff should be injured, or himself be made liable.

229. *Disposition of levy, and further proceedings.*

of the property levied, I sold various tracts of land above mentioned, (*vide*, Sale Book,) except the tract which is stated above to have been conveyed by C. D. to H. L., and in that, C. D. having been found to have no legal interest, the levy as to it was discharged.

And except, also, the interest in remainder above mentioned, as to which, by directions of the plaintiff in this, case (in writing and hereto annexed) the levy was discharged:

And after satisfaction of a judgment, recovered against C. D., in county, by V. B.:

of an execution recovered in County, by V. D., and of other executions having lien prior to this, there remained a balance of five hundred and fifty dollars, (which I applied to this case.)

which being rateably divided, between this case and others of equal lien, the sum of one hundrd and twenty-two dollars and twelve cents was applicable to this,—

from which, the costs having been retained, seventy one dollars and four cents remained, which I applied towards the damages [or, debt and damages,] within mentioned:

the black horse was on , offered for sale and remained in my hands for want of bidders.

the articles mentioned in the schedule annexed to the Fi. Fa. of E. F. v. C. J., had on been sold under that Fi. Fa. and applied to it, by reason of its prior lien:

Of the articles mentioned in the schedule hereunto annexed, a yoke of oxen having been found included in a mortgage, from the said C. D. to W. T., older than the lien of this Fi. Fa., but junior to another Fi. Fi. against the said C. D. at the suit of O. H., in my office, were released from the levy in this case and transferred to that last mentioned case.

A sideboard and a dozen chairs having been found not to be the property of the said C. D. but to belong to one R. G., were on delivered to the order of the said R. G.:

And the other articles mentioned in the said last mentioned schedule hereto annexed, having been left in the possession of the said C. D., under his promise to produce them on the day of sale, were not produced. Afterwards, on day of , I regained possession of one bureau and ten sheep, part of the articles in the last mentioned schedule, which with the house, being wholly insufficient to satisfy the executions in my hands against the said C. D., on by, &c. I made a further levy of the property of the said C. D, to-wit, &c.

The within named C. D., has no other goods, &c., within my county whereon I can levy, as I am within commanded.

230. *Plaintiff's orders to wait.*

By directions of the plaintiff, (in writing hereon endorsed,) I have stayed the execution of this writ.

231. *Stay by order of Court or Judge.*

By order of the Court, [*or*, of the Honorable , made at Chambers,] (hereunto annexed.) I have stayed the execution of this writ.

When the orders to stay specify the time of delay, after its expiration, if the active energy of the writ remain, proceedings should, without further directions, be had as upon the lodgment of a writ: but if no time be specified, when proceedings may be desired, the countermand of the former directions should properly be in writing and endorsed on the writ.

The subsequent Return should begin:—

The time of delay having expired, (*or*, The orders to wait having been countermanded,) I, on &c.

232. *Application of money received to Fi. Fa.*

From money which I received from the defendant, [*or*, From money which came to my hands, from sales made in the case of A. B. v. C. D.,] I applied to this case, &c.

233. *Preceding Sheriff.*

If personal property has been levied, and not sold by a Sheriff, he should turn it over to his successor. If by reason of death, destruction, failure of the defendant to produce it, or other cause, it cannot be turned over, the retiring Sheriff should, by a suitable return, shew the disposition of the levy.

A neglect of this kind may sometimes be supplied by the successor, thus:—

On , I sold &c.: The other articles mentioned in the said levy were not turned over to me by my predecessor in office, and I know were not sold by him; : the mule having been left in the possession of C. D., and not produced afterwards for sale: The carriage having been delivered to E. F., who claimed it as his property; the clock having been, by order of the plaintiff (in writing and hereto annexed,) re-delivered to the said C. D.

Afterwards I made a further levy, &c.

The said C. D. hath no other goods, &c.

(Stay or other return, according to circumstances.)

234. *Payment to Landlord, Tax-Collector, &c.*

(*Levy and Sale, ut supra.*)

Of the proceeds of the sale of the goods aforesaid [*or*, of the goods mentioned in Schedule A. hereto annexed,] to wit: The sum of dollars, I have paid to G. M., the landlord of the premises, whereon the said goods were seized, for rent not exceeding one year, which became due to him for the said premises on day of last, the sum of —* (which sum after deduction of the expenses of my proceedings, had before notice of the said rent, was not sufficient to discharge the rent due as aforesaid:)

(*As in preceding to*—*) further part thereof, I have paid to R. T., Tax-collector for the County of for the taxes, which, within one year before my sale, N. M. former owner of the said goods [*or*, lands,] became liable to pay on the said goods [*or* lands.]

(*As above, to*—*) further part thereof, [*or*, the residue thereof,] to wit: the sum of I have applied towards the satisfaction of the Fi. Fa. The said C. D. hath no other goods, or chattels, lands, tenements or hereditaments within my County, whereon I can levy the residue of the said (debt and) damages, costs and charges as within commanded,

W. W., Sheriff.

As to funeral expenses and other debts of a deceased defendant, entitled to precedence over executions. See § 29 Act of 1789, 5 Stat. 111; Salvo & Wade v. Smith, 2 Speer 517.

HOMESTEAD.

Under the provisions of laws, enacted since the new Constitution became of force, Sheriffs are compelled to set off the homestead before proceeding to sell under execution, in all cases, with the exception of a levy and sale to enforce the payment of taxes, or obligations contracted for the purchase of the homestead or erecting improvements thereon.

235. *Appointment of Appraisers.*

E. M., is hereby appointed to act with T. J., and P. S,. who have been named respectively by the creditor and by Y. Z., to appraise and set off by metes and bounds a homestead of the estate of the said Y. Z., debtor, against whom process of execution has been issued out of the Court of . And the said appraisers will proceed on the day of next; to make such appraisement, and set off to the said Y. Z., his homestead according to law.

W. W., Sheriff.

For consolidated Acts relating to the homestead, and the manner of proceeding by the Sheriff; compensation of appraisers; and penalties if Sheriff violate any of the provisions of law. See 14 Stat. 231. Gen. Stat. 436: also 15 Stat., 1873.

ATTACHMENT.

236. *Return upon Warrant of Attachment.*

THE STATE OF SOUTH CAROLINA, } In the Common Pleas.
County. }

To the Sheriff of the said County:

Whereas, an application has been made to me by P. T., plaintiff, for a warrant of attachment against the property of R. S., defendant, and it appears by affidavit that a cause of action exists in said action in favor of the said plaintiff against the said defendant for the sum of dollars, with interest thereon, from the day of 18 , and the said affidavit specifying the amount of the said claim and the grounds thereof, and that the said defendant and the said plaintiff having given the undertaking required by law: Now, you are hereby commanded, that you attach and safely keep all the property of the said defendant within your County, in the hands, possession, or control of, or so much thereof as may be sufficient to satisfy the said plaintiff's demand of dollars, with interest as aforesaid, together with all costs and expenses; and that you proceed hereon in the manner required of you by law.

Witness my hand and seal, this day of 18 .

(Seal.) H. J., C. C. P.

By virtue of this writ, by my Deputy, at o'clock M., on the day of 18 , I attached, of the property of the within named , debtor, in the hands or under the control of the things mentioned in inventory hereunto annexed, and, at the same time delivered to the said a copy of this warrant with the following notice thereon endorsed: I hereby certify the above to be a true copy of the original Warrant of Attachment in this suit and that the attachment, of which the above is a copy, is now in my hands, and that in it I am commanded to attach and safely keep all the estate, real and personal, of the said the above named debtor within my County, (except such real and personal estate as is exempt from attachment, levy, or sale by the Constitution,) with all books of account, vouchers, and papers relating thereto, and that all such property and effects, rights and shares of stock, with interest thereon, and dividends therefrom, and the debts and credits of the said the above named debtor now in your possession or under your control, are, or which may come into your possession or under your control, will be liable to said Warrant of Attachment, and you are hereby required to deliver all such property to my custody without delay, with a certificate thereof, and all moneys, claims and demands of said debtor, and due or arising thereupon, or by reason of by the said or any or either of them.

Dated at this day of 18 . W. W., Sheriff of the County of . To H. J., Esq., Clerk, &c.

Inventory of goods and chattels attached by virtue of the within warrant.

Eight mules,	$ 1,200
Six timber trucks,	1,300
Etc. etc.,	2,000

We the undersigned, appraisers appointed by W. W., Sheriff of County, to appraise the property seized under the within warrant of attachment do hereby certify that we did on the day of 18 , value and appraise the said property as herein above set forth.

J. K. E. M., Appraisers.

Before issuing a warrant of attachment, the officer to whom application has been made, shall require a written undertaking on the part of the plaintiff, with sufficient surety, in the amount of at least two hundred and fifty dollars, for the payment of costs, should the defendant recover judgment, or the attachment be set aside by the Court. The affidavit on which the warrant is granted must also be filed within ten days of the issue of the writ. When real estate is attached a description of the same shall be recorded in the office of the Register of Mesne Conveyances, in a book kept for that purpose; together with the date of the warrant of attachment, the sum demanded, and the officers return thereon. And such attachments so recorded, shall be a lien to bind the real estate from the date of lodgment. See Gen. Stat., 572, 573.

237. *Neither Goods nor Garnishee found.*

I have made diligent search for property of the absent debtor C. D., and for the garnishees E. F. and G, H.. for whom copies of this writ were delivered to me, but can find neither within my County.

238. *Lands and goods attached; no person in possession; and N. E. I. as to Garnishees.*

By virtue of this writ, in my person, [*or*, by Deputy,] at o'clock, A. M., on day of , I attached and took of the property of the within named C. D., the absent debtor, one tract of land, supposed to contain one hundred acres, whereon the said C. D. lately resided, bounded by river, and lands of R. T., and others, with the houses and fixtures thereon; also, the unexpired term of the

said C. D., in a house and lot lately occupied by W., in the town of , which was demised by O. to the said C. D.; also, a black horse, two mules, a wagon, and two beds; and no person having the things attached in possession, I advertised in a news-paper, published in my said County, an account of the things attached and a copy of this writ, with notice for any person or persons claiming the same, to appear as within required, and show cause according to law; after diligent search, I could not find within my County, either of the garnishees, E. F. and G. H., for whom copies of this writ were delivered to me.

239. *Notice to be published.*

[Copy of the writ of attachment, with the usual notice endorsed, and copy of the Return.]

NOTICE.—Any person or persons, who may claim the things attached as above, or any of them, are required to appear and shew cause, according to law, at the time and place mentioned in this copy writ. day of &c.

W. W., Sheriff.

240. *Goods &c., attached in the hands of Garnishee; and copy delivered to Garnishee.*

By virtue of this writ, in my own person, [*or*, by Deputy,] at 10 o'clock A. M., on day of , I attached of the property of the within named C. D., the absent debtor, in the hands, possession, custody, power or control of E. F., the things mentioned in the schedule A, hereunto annexed, and at the same time, delivered to [the said] E. F., garnishee, a copy of this writ, with a notice thereon endorsed, pursuant to the Act of the General Assembly in such case made and provided.—*

241. *Things attached claimed by Garnishee on oath, as Creditor in possession.*

(*As in No.* 240 *to*—*) And the said E. F., having on oath, claimed the things attached as creditor in possession, the same was left in his possession.

Only such property as in fact, or in law, is in the hands of a garnishee, can be attached in his hands. 1 Strob. 239; not unliquidated damages which he claims in a suit, but any bond, note, or other evidence of debt, which may be delivered, can be attached even after suit brought on it.

242. *Things attached taken into possession for want of claim on oath, or of bond; held by Sheriff.*

(*As in No.* 240 *to*—*) And the said E. F. not having claimed, on oath, as a creditor in possession, the things attached as aforesaid, and having refused, upon demand made of him, to enter into bond, as by law required in such case, I caused him to surrender and give up the said things and took them into my possession, and—† now hold them.

243. *Held until attachment dissolved.*

(*As in No.* 242 *to*—†) Held them until afterwards, on day , I delivered them to [the said C. D.; or, one G. H., agent for the said C. D.:]—‡ an order [of Court, or of the Honorable (*Judge*) at Chambers,] having been made, dissolving the attachment, after the entry of special bail. *See No.* 126.

244. *Held until Clerk certified entry of special bail.*

(*As in No.* 243 *to*—†): the (annexed) certificate of the Clerk having been delivered to me, shewing that special bail had been entered, whereby the attachment was dissolved. *See No.* 126.

245. *Held until bond given to the Sheriff.*

(*As in No.* 242—†): The said C. D., (*the defendant,*) having appeared and entered into bond to me with R. S. and U. W., sureties to appear and answer the judgment and condemnation of the Court in this case.

246. *Held until sale under order, proceeds ready. Rescue, &c.*

(*As in No.* 242 *to*—†) Held them until afterwards, on day , I sold them under an order made by the Honorable (*Judge*) at Chambers, [to wit, the tract of land lying, &c., I sold to M. R., for dollars, the stallion Graybeard, to X. Y., for dollars, or, as will more fully appear by the account of sales in my Book of Sales.] Of the proceeds of sale, after payment of expenses, I applied dollars to the satisfaction of a Fi. Fa., K. L. v. the said C. D., older than this writ of attachment, and the balance of dollars, I have ready to be paid, as the Court may direct.

247. *Bond given under the* 1*st. section of the Act of* 1844.

(*As in No.* 240 *to*—*) And the said E. F., not having claimed on oath, as creditor in possession, the things attached as aforesaid, he entered into bond with O. and P., his sureties, not to waste or eloign the said property so attached, and to render a schedule thereof on oath to me as Sheriff, and to make due return to this writ according to law, and to surrender the property attached when thereto required by law, or by any order of Court made in pursuance of the Attachment law.

To be added, if schedule rendered.

And afterwards, to-wit: , the said E. F., rendered to me the annexed schedule on oath.

Bond: under 1*st section of Act of* 1844.

This bond should be in a penalty double the sum sued for; that is, double the debt or damages mentioned in the writ with good security, such as the Sheriff will be responsible for; payable to the Sheriff, his successors in office and assigns, for the use of the plaintiff in the attachment, conditioned as follows:

Now the condition of this obligation is such, that if the above E. F., shall not waste or eloign the property which the said J. S., Sheriff as aforesaid, has attached in his hands, possession, custody, power or control, under the writ of attachment in the case of the said A. B. against C. D, the absent debtor, of which are the following articles, which have been actually attached, a part in the name of the whole, to wit: [the articles mentioned in the schedule annexed, or, on a tract of land, &c.,] and shall render a schedule, on oath, to the said J. S., Sheriff as aforesaid, and make due return to the writ according to law, and shall render the property attached as aforesaid, when thereto required by law, or by any order of Court made in pursuance of the attachment laws:—Then this obligation shall be void else to remain in full force and virtue.

Signed, sealed and delivered in presence of } [L. S.] [L. S.] [L. S.]

The Sheriff may assign this bond to the plaintiff in attachment, and the plaintiff, or his assgins, may sue on it.

Assignment.

At the request of the within named , plaintiff in attachment, I assign the within bond to him and his assigns.

Witness my hand and seal, this day of, &c.

In presence of } W. W., Sheriff. [L. S.]

Under the 2nd section of the Act of 1844, 11 Stat. 290, after the garnishee has been summoned, and either no goods have been actually attached, or goods attached have been left in his hands, after a claim on oath, an affidavit by the plaintiff, or by some person duly authorized by him, such as is mentioned in the section, may be made and annexed to the writ of attachment with an order, (to be made probably by a Judge, or any Commissioner of bail,) and thereupon the Sheriff may cause the garnishee to enter into bond.

RETURNS UPON THIS ORDER.

248. *Non est inventus.*

I have made diligent search for the garnishee E. F., named in the annexed order, and have not been able to find him within my County.

249. *Arrest and detention for want of bond.*

I, [by myself, *or*, by deputy,] did on under the annexed order, arrest the within named E. F., the garnishee, for the purpose of causing him to enter into the bond required, and he not having done so, I hold his body in custody.

250. *Bond taken.*

Under the annexed order, I did on , [in my proper person, or, by Deputy,] cause the within named E. F. to enter into bond as required, in which his sureties are O. and W.

251. *Bond: under 2nd section of Act of* 1844.

This bond should be in a penalty double the amount sued for, that is, double the debt and damages, or demand, mentioned in the writ; with security, such as the Sheriff will answer for, payable to the Sheriff, his successors or assigns; conditioned as follows:

Now the condition of the above obligation is such, that if the above bound E. F., (against whom as garnishee, in a case of attachment, A. B. against C. D., an order founded upon an affidavit, annexed to the writ of attachment has been granted under the 2nd section of the Act of the General Assembly in such case made and provided, and entitled "an Act to amend the attachment laws of the State," passed in 1844;) shall well and truly make the returns required by the said Act, and surrender and deliver according to law, the property of the said C. D., the absent debtor, which, since lodgment of the attachment writ aforesaid, hath been in the hands, possession, power, or control of the said E. F —then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in presence of } [L. S.] [L. S.] [L. S.]

Assignment of Bond.

To be endorsed on it.

.....County.

At the request of A. B., (the plaintiff,) I hereby assign the within bond to him and his assigns.

Given under my hand this day of A. D.

W, W., Sheriff.

252. *Notice against garnishee failing to make the return required under 3rd section of Act of* 1844.

To be served two days before motion for judgment against garnishee, personally or by copy posted.

RETURNS THEREON.

Notice served personally.

I, [in my own person, or, by Deputy,] on . delivered a copy of this notice to the within named E. F., garnishee.

Copy posted.

The within named E. F., garnishee, being absent from this State, [or, from my County,] I did, on , post a copy of this notice on the door of the Court-house in my County.

253. *Bond to the Sheriff; replevying goods attached.*

By the 18th section of the Sheriff's Act of 1839, 11 Stat. 30, it is provided, that, "in case any defendant in attachment shall appear while the goods or effects attached are in the possession of the Sheriff, and before judgment shall have been rendered, and shall enter into bond, with good security to the Sheriff, to appear and answer the judgment and condemnation of the Court, the Sheriff shall deliver the goods and effects aforesaid to such defendant, and the said bond so to be executed, shall be assignable to, and may be sued in behalf of the plaintiff, as a bail bond may be. See Defendant's bond No. 128, and bond of Claimant No. 139.

In a proper case, care should be taken to make the bond in a penalty double the sum sued on payable to the Sheriff, his successors or assigns, with such security as the Sheriff is willing to answer for; and condition, that the defendant shall in the case wherein the goods were attached, appear and answer the judgment of the Court.

The assignment must be like that of a bail bond, under seal, and in the presence of two witnesses.

TROVER.

254. *Order in Trover.*

Under an order made, requiring the Sheriff to cause the defendant, in an action of Trover, to give bond for the production of the chattels sued for, (1839 11 Stat. 76 § 20: Trover Act of 1827, Stat. 337,) the returns of the Sheriff will be similar to those which apply to the preceding order under the 2nd section of the attachment law of 1841. (Nos. 247 and 249.) Trover bond taken, injunction, discharge by order of plaintiff, order to stay, non est inventus, arrest and detention, arrest and rescue arrest and death languidus, privilege and tarde would be returns. See 2 Hill, 667; 3 Rich. 143; 11 Stat. 28 § 13.

255. *Bond: under order in Trover.*

Now the condition of this bond is such, that if the above named C. D., (the defendant,) who has been sued in the Court of Common Pleas for County, in an action of Trover, by A. B.. plaintiff, for a certain chattel, to-wit: a stallion, named Mazeppa, shall produce the said chattel, so sued for, to satisfy said plaintiff's judgment, in case the said plaintiff should recover in the said action: then this bond shall be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered } [L. S.]
in presence of } [L. S.]

BAIL.

Under an order for *bail, pending an action*, (6 Stat. 337.) the returns are similar to those which are made under a bail writ.

See. *for the form of a bail bond.* 14 section of Sheriff's Act of 1839. 11 Stat. 29. Care should be taken to describe correctly, "the plea expressed in the process of the plaintiff; as to answer to A. B.. the plaintiff—"in a plea of debt" —"in a plea of assumpsit"—"in a plea of covenant" —"in a plea of detinue"—"in a plea of case"—"in a plea of trover"—in a plea trespass vi et armis." The *time of appearance* should be always set down, and must be to the term, next after the execution of the bond, except where the service of the writ, arrest and execution of the bond, are all between return day and Court, and then the second term afterwards is the time.

256. *Assignment of bail bond.*

To be endorsed on the back of the bond. 11 Stat. 20 § 23.

As Sheriff of County, [and successor of former Sheriff of the said County,] I assign this bond to plaintiff in the action wherein it was taken, according to the statute in such case made and provided.

Done in presence of W. W. Sheriff. [L. S.]

("two credible witnesses.")

The Sheriff should take a receipt for the bond when he delivers it.

257. *Render by bail.*

Bail bonds may be taken, not only under arrest made by virtue of writs and orders requiring bail, but in cases of detention after render by bail: See 11 Stat. 29.

The render may be made to the Sheriff without previous order of the Court, at any time before the end of the term to which the service of effective process against the bail has been returned. If the render be made after the return of Ca. Sa. there must be an order of Court to confirm it. "The Sheriff has the right to take time for all necessary enquiries, and (after ascertaining the right of the bail to render and his right to receive,) to require that the body be delivered in the jail, with exact notice of the case in which it is rendered. The bail, on their part, have a right to require the means of distinctly proving what has been done, of which none can be so apt as a receipt from the Sheriff, containing all necessary particulars. Prudent men will, in general, take care that written evidence be had on both sides." Glover v. Gomillion, 2 Rich. 556: see Bomar v. Poole, 2 Speer 119; Meyers v. Centre, 2 Strob.

258. *Acknowledgment.*

To be signed by the principal, rendering himself in discharge of his bail, or by the bail, rendering their principal in their own discharge: and to be kept by the Sheriff.

A. B.....
c. } Action of assumpsit. In the Common Pleas. County.
C. D....., } Writ lodged, not yet returned, or, On Calendar, or,
Judgment entered and Ca. Sa. lodged.

E. F. and G. H., Bail for C. D.

C. D. rendered himself this day in discharge of his bail in this case,
day of C. D.

Witness:

or,

C. D. has been rendered this day by E. F., one of his bail, in this case.
day of

Witness:

A receipt in like form should be signed by the Sheriff and given to the principal or bail that makes the render.

If the render be intended to apply to more than one case, all the cases so intended should be carefully stated.

259. *Return of render on mesne process.*

If the render be made before the return of the mesne process under which the bail was taken, it should be subjoined to the return of arrest and bail taken: thus:

Afterwards, to wit, on day of the said having [rendered himself in discharge of his bail, *or*, been rendered by his bail,] I detained him and hold him in custody, *or*, him safely kept until he again gave bail according to law.

Enter on writ, "names of bail in second bail bond."

260. *Return of render on Ca. Sa.*

If the render be made before the lodgment of Ca. Sa., or after its lodgment and before its return, it must be entered on the Ca. Sa., thus:

The body of the within named , being in my custody, under the render [made by himself in discharge of his bail, *or*, made of him by his bail,] at the lodgment of this writ, was detained by virtue of this writ, and I now have it in custody.

HABERE FACIAS POSSESIONEM, WITH FI. FA. OR CA. SA.

261. *Possession delivered.*

By virtue of this writ, [in person, or, by Deputy,] on , I delivered to the within named A. B., possession—*of the tract of land within described, as I am within commanded.

262. *Return of Fi. Fa. or Ca. Sa., joined with hab. fac. poss.*

To the above return, No 260, add after—*

And [in person, or, by &c.] on , I levied &c., [*returns as in Fi. Fa.*] or, I took the body, [*if Ca. Sa. for damages and costs*]: or, The within named hath no goods, &c. or, The within named is not to be found, &c.

Other returns as on Fi. Fa and Ca. Sa. according to the circumstances.

263. *No person came to point out land and receive possession.*

Since the writ of *Habere facias possessionem* was delivered to me, I have always been ready and willing to execute the same: but neither the said A. B., nor any other person on his part, hath ever come to me, to shew me the tenements within mentioned, or any part thereof, or to receive possession of the same, or any part thereof from me.

264. *Bond indemnifying the Sheriff for selling goods on a Fi. Fa.*

Penalty, twice the value of all the goods taken; payable to W. W., (the Sheriff,) his executors, administrators and assigns: by the principal and sureties, jointly and severally, their heirs, executors, and administrators; dated &c.

Recital.—Whereas, the above named W. W., as Sheriff of County, by virtue of a writ of Fi. Fa., in the case of A. B. against C. D., lodged with him on , hath seized and taken divers goods and chattels, to wit: , as the proper goods and chattels of the said C. D., and the said goods and chattels have been claimed by E. F., who hath given to the Sheriff notice, not to proceed to a sale of the said goods and chattels, or to pay over the money which may arise from the sale thereof; to the said A. B.; and the said A. B. hath applied to the Sheriff, and requested him, notwithstanding such claim and notice, to sell the said goods and chattels, and pay over the money thence arising to the said A. B., under the Fi. Fa. aforesaid, which the said W. W. hath consented to do upon being indemnified for so doing:

Condition.—Now the condition of the above obligation is such, that if the above bound A. B, his heirs, executors and administrators, do and shall, from time to time, and at all times hereafter, well and sufficiently save harmless and keep indemnified, the said W. W., his deputies, officers and agents, and each and every of them, of, from and against all losses, costs, charges, damages, and expenses, which he, they, or any of them, shall or may sustain, expend, or be put to, for, or by reason of seizing or selling the said goods and chattels, or any part thereof, or paying to the said A. B. the money which may arise from the sale thereof, or any part thereof, towards satisfaction of the Fi. Fa. aforesaid, and, also, from and against all actions, suits or proceeding, at law or equity, which now are, or hereafter shall be brought or had, rightfully or wrongfully, against the said W. W., his deputies, officers and agents, or any, or either of them, for, or by reason of the seizing, selling or paying as aforesaid, or for, or by means of any other cause, act, matter or thing whatsoever, relating thereto, or to the execution of the said Fi. Fa.—then this obligation shall be void, else to remain in full force and effect.

Signed, sealed and delivered in the presence of } [L. S.] [L. S.] [L. S.]

265. *Bond indemnifying the Sheriff for abandoning goods, and returning nulla bona.*

Penalty as above. (No. 264.)

Recital.—Whereas, the above bound W. W., as Sheriff of County, hath, under a writ of Fi. Fa., in the case of A. B. against C. D., lodged in his office on , seized and taken divers goods and chattels, to wit: as the proper goods and chattels of the said C. D.: and whereas, the above bound E. F., hath given notice to the Sheriff, and claimed the said goods and chattels, and re-

quested the said Sheriff to abandon, and quit possession of the said goods and chattels, and deliver them to the said E. F., and to make return on the said Fi. Fa of *nulla bona*; which the Sheriff, honestly believing that the said goods and chattels do really belong to the said E. F., but entertaining some apprehensions, by reason of the doubtfulness of the title thereto, is willing to do, upon the said E. F., indemnifying him for so doing:

Condition.—Now the condition of the above obligation is such, that if the above bound E. F., his heirs, executors, and administrators, do and shall, from time to time, and at all times hereafter, well and sufficiently save harmless, and keep indemnified, the said Sheriff, his deputies, officers, and agents, and each and every of them, of and from all losses, costs, charges, damages, and expenses, which he, or they, or any of them, shall, or may sustain, pay, or be put to, for, or by reason of abandoning, quitting possession, and delivering to the said E. F., the goods and chattels aforesaid, and returning *nulla bona* on the said Fi. Fa.: and, also, of, from, and against all actions, suits, and proceedings, at law or equity, whatsoever, which now are, or hereafter shall be brought, either rightfully or wrongfully, by the said A. B., or by any person whomsoever, against the said Sheriff, his deputies, officers, and agents, or either, or any of them, for, or by reason of the abandoning, quitting possession, and delivering the said goods and chattels to the said E. F., and returning *nulla bona* on the said Fi. Fa., or for, or by reason of any other act, matter or thing whatsoever relating thereto, or to the execution, or return of the said writ of *fieri facias*: then this obligation shall be void, else to remain in full force and virtue.

Signed, sealed and delivered in the presence of } [L. S.] [L. S.] [L. S.]

REPLEVIN.

266. *Replevin Bond.*

By A. B., the tenant, whose goods have been distrained, and two responsible persons as sureties. Payable to W. W., the Sheriff, his certain attorney, executors and administrators, successors in office, and assigns. Penalty, double the value of the goods distrained, to be ascertained by the oath of one or more credible and disinterested witnesses, which oath the Sheriff may administer.

The Condition of this obligation is such, that if the above bound A. B., shall, in the Court of Common Pleas for County, prosecute with effect, and without delay, his suit against C. D. (*the landlord,*) [and E. F. (*the bailiff.*)] for the taking and unjustly detaining of his goods and chattels, to wit; (*copy the enumeration of the goods distrained from the writ of Replevin.*) And, if a return of the said goods and chattels shall be adjudged, before any deliverance be made of the distress, shall make return of the same: [and in case the same shall be insufficient to satisfy the rent for which the distress has been made, or in case the same shall be eloigned, shall pay the full amount of the rent aforesaid, and all costs of suit which may be adjudged against the said A. B. in the suit aforesaid:] [and, moreover, if the said A. B., shall well and truly keep harmless and indemnified the said W. W., Sheriff as aforesaid, his deputies and agents, touching the replevying and delivery of the said goods and chattels, and also, upon and against all actions, damages and costs that may arise therefrom,] then this obligation shall be void, else to remain in full force and virtue.

Sealed, &c.

Assignment of bond.

To be endorsed on bond.

County. At the request and costs of (*the avowant, or person making cognizance,*) I hereby assign this bond to the said (avowant or person.)

Witness my hand and seal, this day of 18

In presence of W. W., Sheriff. [L. S.]

("two or more credible witnesses.")

This bond, even before the Statute of 1839, which expressly authorizes the assignment, could be sued in the name of the assignee; 1 McC. 300; 2 McMul. 166; and, although no Statute authorizing and regulating the assignment had been expressly enacted, the 23 d section of Stat. Geo. 2. (2 Stat. 579.) seems to have been adopted in practice. See Pemble v. Clifford, 2 McC. 31: Reed v. Stoney, 2 Rich. 402; Boger v. Brown & Sharlock, 1 Speer 276. In like manner the Stat. of 17 Chas. 2 ch. 7, and other British Statutes concerning Replevin, not expressly made of force, seem to be adopted. See 1 N. & Mc. 32, and cases referred to in those above cited.

267. *Return of writ of Replevin. Goods replevied, and writ served.*

By &c., on &c.. I replevied the goods and chattels within mentioned, and delivered them to the within named A. B., he having executed a Replevin bond, with O. P. and L. G., his sureties: on the same day and by the same Deputy, I delivered a copy of this writ to the within named E F., and left a copy for the within named C. D., at his most notorious place of residence.

268. *Return of writ of Replevin. Elongata.*

Before the coming of this writ to me, the goods and chattels within mentioned, were conveyed away by the within named C. D.. to places to me unknown: Wherefore, I cannot cause the same to be delivered to the said A. B., as I am within commanded.

So there may be return of part replevied and *elongata* as to part. 2 N. & McC. 144.

269. *Return of writ of Replevin—property claimed—Quære?*

The within named A. B., executed a Replevin bond with responsible sureties, and I was ready to replevy the goods and chattels as within commanded: but, on the within named C. D., in his own proper person claimed that the said goods and chattels were of his own property before the distress made thereof: Wherefore, until the claim of property be determined, I forebore to replevy as within I am commanded. (*See* 3 Black. Com. 148.)

270. *Retorno habendo.*

May be returned, goods returned as commanded, or *elongata*, either of them, in whole or in part. If the *retorno habendo* be combined with a Fi. Fa., it is usual to return *elongata*, and proceed to levy and sell as under a common Fi. Fa. If there are, however, other writs of Fi. Fa. older than the *retorno habendo*, but junior to the distress, the goods distrained (as in custody of the law,) will be subject to the *retorno habendo cum fi. fa.*, in preference over the other writs. Harris v. Clayton, 1 McMul. 194: 3 McC. 43.

271. *Withernam.*

May be returned goods of the value required, taken and delivered as commanded, or *nulla bona*: either of them, in whole or in part.

HABEAS CORPUS.

272. *Return of Habeas Corpus directed to the Sheriff. Body ready with the cause.*

THE STATE OF SOUTH CAROLINA,)
County.)

I, W. W., Sheriff of the said County, do certify and return to [the Honorable one of the Law Judges of the said State, or, to A. B. and W. P., Esquires, two Trial Justices of the County aforesaid,] named in the writ to this schedule annexed, that, before the said writ came to me, to wit: on the day of in the year within written, C. D. in the writ named, [was taken, and in the jail of the County aforesaid, is detained by virtue of a writ of *capias ad satisfaciendum*, which is in these words, to-wit, "The State of South Carolina, &c., (*set forth the writ and all endorsements verbatim,*) or, was committed to my custody, by virtue of a certain warrant to the tenor and effect following (*warrant, verbatim*)]: and these are the causes of the [taking and] detaining of the said C. D., whose body I have here ready, as by the annexed writ I am commanded.

W. W., Sheriff.

273.. *Excuse. Prisoner ill in jail.*

County : to wit :

I, W, W., Sheriff of the said County, do certify and return, that C. D. in the writ to this schedule annexed named, was before the coming to me of the said writ, to wit: on [taken and] detained in the jail of the County aforesaid, by virtue of a certain writ, or, warrant, or order, to the tenor and effect following : (*copy verbatim,*) and that the said C. D. remains in the jail aforesaid, under my custody, so languid, that, without great peril and danger of his life, I cannot have his body at the day and place in the said writ contained, as therein I am commanded.

W. W., Sheriff.

Of the writ of Habeas Corpus, with signature and endorsements, an exact copy should be taken. The writ directed to the Sheriff may be served by the Coroner, or any discreet person, who can make the affidavit of service, to found an attachment upon in case a satisfactory return of the writ be not made. The writ, directed to any other person, should be lodged with the Sheriff and served by him; (Sheriff's Act 1839, 11 Stat. 27 §6, Writ Book.) The service in every case should be by delivery; and it seems better that the original should be delivered, to be returned with the cause; and that the affidavit, shewing service, should be on the copy, and should declare, that the original signed by the Judge or Trial Justices who granted it, had been delivered on a day certain.

274. *Returns by Sheriff to rule to shew cause why money has not been made and paid over.*

STATE OF SOUTH CAROLINA,)
County.)

The answer and return of W. W., Sheriff of County, to a rule which has been served upon him at the instance of requiring him to shew cause (*copy from rule.*) I, W. W., answer on oath as follows:

I have made this money as required by the said writ of Fi. Fa., and have the same ready to be paid to the said A. B., if the Court shall so order. I received notice (a copy of which is hereunto annexed,) from Esquire, attorney for E. F., that E. F. alleged on oath, that the judgment, upon which the said writ is founded, was confessed in fraud of him, the said E. F., and other creditors of the said C, D.: and that the said E. F. had filed a suggestion in this Honorable Court, for the purpose of establishing the fraud, setting aside the said judgment, upon which issue has been joined, and a speedy trial is expected.

To rule by assignee of Fi. Fa. Money applied to Fi. Fa. against assignor, before assignment.

(*As above to* —*) I made the money as required by the said writ of Fi. Fa. and on before the day when, as I am informed and believe, the assignment of the said F. Fa. was made to the said G. H., I applied the said money towards satisfaction of a Fi. Fa., in the case of K. L. v. C. D., which was lodged in my office on day of

Short time, and notice to set aside Fi. Fa.

(*As above to*—*) I was ready and willing to proceed to the execution of the said writ of Fi. Fa., but after its delivery to me, there being barely time for levy and sale, I received on , from the said C. D. notice, that he had by his own affidavit, and affidavits of other persons, shewn sufficient cause for setting aside the said writ of Fi. Fa., and would at this term, make a motion for that purpose: Wherefore, I delayed until the decision of this Honorable Court might be had.

JURORS.

375. *Summons for a Juror.*

To be served personally, or left at the most notorious place of residence.

STATE OF SOUTH CAROLINA: County.

A, B. *Sir,*—You are hereby summoned, to be and appear personally before the Court of Common Pleas and General Sessions, for the County aforesaid, to be holden on at next, at 10 o'clock in the forenoon, to serve as a [Grand, or, Petit] Juror.

Herein fail not, on pain of the fine and forfeiture that will fall thereon.

day of 18 W. W., Sheriff.

376. *Return of Writ of venire facias.*

STATE OF SOUTH CAROLINA, }
County of . }

I, W. W., Sheriff of the County aforesaid, do hereby certify and return, that the execution of the [within or, annexed] writ, appears by the schedule [thereto annexed, or, above written :] and we, the said W. W., and O. P. and S. K., deputies of the said W. W., severally swear, that the statement contained in the first and second classes of the said schedule, of different services, by us respectively made, are true: and that, after diligent search, we have not found the persons named in the third class, nor ascertained that they, or any of them had any dwelling house or usual place of residence, in this County. W. W.

Sworn to day of) O. P.
Before) S. K.

SCHEDULE.

FIRST CLASS.—Such of the persons named in the panel to the writ annexed as were served personally: every of whom was served by the Sheriff or Deputy, whose name is placed opposite to his name, and at the time there mentioned.

Jurors' Names.	By whom served.	When served.
A. W.	W. W.	1 June 18 .
R. G.	O. P.	4 June 18 .
S. D.	S. K.	5 June 18 .

SECOND CLASS.—Such of the persons named in the writ annexed, as were served by summonses left at their houses respectively: every of whom, was served by the Sheriff or Deputy, whose name is placed opposite to his name, leaving a proper summons at his house, or usual place of residence, on the day there mentioned.

Jurors' Names.	By whom served.	When served.
O T.	O. P.	1 June 18 .
T. E.	S. K.	2 June 18 .

THIRD CLASS.—Such of the persons named in the panel to the writ annexed, as could not after diligent search be found.

M. R.
P. G.

277. *Return to special Writ of venire in term time.*

STATE OF SOUTH CAROLINA, }
County. }

I, W. W., Sheriff of the County aforesaid, do hereby certify and return, that the execution of the within writ appears by the schedule thereunto annexed, and that I did this day, in my own proper person, (or, by my Deputy, C. D.) summon the within named A. B., C. D., E. F., G. H., I. J., and L. E., to appear forthwith before this Honorable Court, to serve as petit Jurors during the present term.

Sworn to day of }
Before H. J. Clerk. } W. W., Sheriff.

SPECIAL EXECUTIONS.

278. *Return of Fi. Fa. upon forfeited recognizance: Fi. Fa. for fine, or Fi. Fa. on Bastardp bond.*

Levy, sale, application of proceeds, and excuses for not executing, as upon other writs of Fi. Fa.

To authorize a Ca. Sa. the Sheriff or his Deputy, must return on oath:

1st. *Nulla Bona*, or, 2nd, The within named C. D. has not within my county sufficient property, whereon to levy as within commanded: or, 3rd, The within named C. E. refused upon demand to pay the sum of money within mentioned.

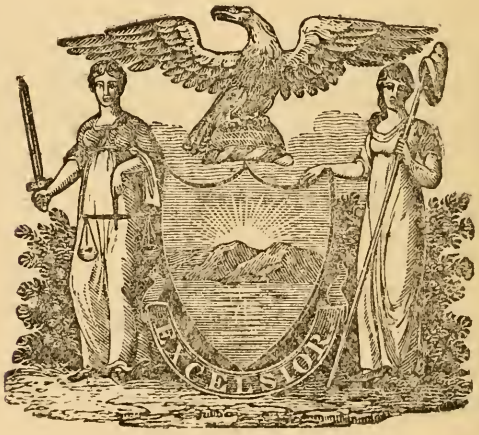
C. D., the defendant, having neglected, (or refused,) to pay the fine within mentioned, and the proper costs and charges: or, the defendant having failed to point out sufficient personal property to satisfy the fine within mentioned and costs; I, on the day of by my Deputy, seized the said C. D., and committed him to jail: afterwards he paid the said fine and costs: or, afterwards, on he was released, upon his making oath before A. W. Esquire, Trial Justice, that he was unable to pay the sum demanded of him.

279. *Proclamation on opening Court.*

Hear ye! hear! hear ye! All manner of persons who have any business to do at this Circuit Court of General Sessions—* (or, Common Pleas,) now held in and for the County of , let them draw near, and give their attendance, for now this Honorable Court is here open.

And for an adjournment:

(*As above to*—*) take notice, that this Honorable Court stands adjourned until to morrow, at o'clock in the morning (or, *sine die.*)



280. *Citation for letters of Administration.*

THE STATE OF SOUTH CAROLINA, }
County, }

By Esquire, Probate Judge.

WHEREAS, made suit to me, to grant Letters of Administration of the Estate and effects of These are therefore to cite and admonish all and singular the kindred and creditors of the said deceased, that they be and appear, before me, in the Court of Probate, to be held at on next, after publication hereof, at 11 o'clock in the forenoon, to shew cause, if any they have, why the said Administration should not be granted.

Given under my hand, this day of Anno Domini, 18

Published on the day of 18

281. *Citation to Heirs.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Judge of Probate.

To Greeting:

You are hereby required to appear at the Court of Probate, to be holden at for County, on the day of A. D. 18 to shew cause, if any you can, why the Real Estate of deceased, situate in said County, on bounding and containing acres, originally granted to should not be alloted to the said hereof, and the remaining in equal portions to the said and

Given under my Hand and Seal, this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

282. *Citation to Administrator or Executor to render Account.*

THE STATE OF SOUTH CAROLINA }
County. }

By Judge of Probate. To

You are hereby cited and admonished personally to be and appear before me, in the Court of Probate, to be held at on day of at o'clock in the forenoon, then and there, to shew cause, if any you can, why you should not make and render before me, a true, just and faithful account of your administration of the said estate.

Hereof fail not at your peril.

GIVEN under my hand and seal, this day of in the year of our Lord one thousand eight hundred and

283. *Citation for relief of Sureties.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Esquire, Judge of Probate To

WHEREAS, the sureties for the said Administrat hath represented to me, that conceive in danger of being injured by said suretyship, and petitioned for relief: THESE ARE, THEREFORE, to cite and admonish you personally to be and appear before me, in the Probate Court, to be held at on day of at 11 o'clock in the forenoon, then and there, to shew cause, if any you can, why you should not make and render before me, a true, just and faithful account of your Administration of the said Estate, and why such order or decree should not be made as will be sufficient to give relief to the Petitioner.

Hereof fail not at your peril.

GIVEN under my hand and seal, this day of A. D. 18 and in the year of American Independence.

284. *Homestead Citation.—Widow and Minor Children.*

THE STATE OF SOUTH CAROLINA, County. } IN PROBATE COURT.

IN MATTER OF ESTATE OF Deceased. } Application for Allotment of Homestead to Widow and Minor Children.

To minor Children of said deceased.

You are hereby summoned and required to be and appear in the Court of Probate for said County to be held at on the day of at o'clock A. M., on a trial then and there to be had on a petition filed in this Court by Widow of said Decedent, to have an estate and right of Homestead allotted and set off under the provisions of an Act to determine and perpetuate the Homestead, ratified on 9th day of September, 1868. And to have a Guardian *ad litem* appointed by the Court to represent your rights and interest in said proceedings.

Herein fail not under the pains and penalties consequent thereon.

GIVEN under my Hand and Seal of Office, this day of Anno Domini 18

285. *Warrant under Homestead Act.*

THE STATE OF SOUTH CAROLINA, County. } In Probate Court.

By Esquire, Probate Judge. To

These are to authorize and empower you, or any three of you, to repair to all such parts and places within this County as you shall be directed unto by Administrat of Estate of and you are hereby appointed appraisers under the provisions of the Act of the Assembly of this State, known as an Act to determine and perpetuate the Homestead, enacted Anno Domini 1873, being sworn upon your corporal oaths, to value, set apart and assign to the Widow and minor Children of late of said County deceased, of the real estate of said a Homestead, not exceeding in value one thousand dollars ($1,000), and of the personal estate of said to the value of five hundred dollars ($500), of such

personal property of said Decedent as is or may be allowed in and by the Constitution of the State of South Carolina and said above mentioned Act, for the benefit of the said Widow and minor Children of said Decedent, to be had and enjoyed by them until the youngest child is twenty-one years of age, and until the marriage or death of the said widow, and to be limited to that period.

And you are further directed and required to make a schedule of the real and personal property so set apart by you, and return the same under your hands and seals to the Probate Court of County within days from date.

Given under my hand and seal of office, this day of Anno Domini 18

Probate Court, }
RECORDED }
..... }
Book..... }
Page..... }

286. *Summons for Witness.*

THE STATE OF SOUTH CAROLINA, } In the Court of Probate.
County. }

To YOU, and each of you are hereby summoned to be and appear at the Court of Probate, to be holden at on the day of next, to testify, according to your knowledge, the truth in a certain cause now pending, and then and there to be tried between Complainant, and Defendant, on the part and behalf of the Herein fail not on pain of the penalties that will fall thereon.

WITNESS, ESQ., Probate Judge of County, this day of Anno Domini, one thousand eight hundred and

287. *Summons in partition.*

THE STATE OF SOUTH CARGLINA, }
County. }

By Judge of Probate.

To Greeting:

You are hereby required to appear at the Court of Probate, to be holden at for County, on the day of A. D. 18 to show cause, if any you can, why the real estate of deceasd, situate in said County, on bounding and containing acres, originally granted to should not be allotting to the said hereof, and the remaining in equal portions to the said and

Given under my hand and seal, this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

(Seal). R. K. C., Probate Judge.

288. *Warrant of Appraisement for Administration.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Judge of Probate.

These are to authorize and empower you, or any three or four of you, whose names are hereunder written, to repair to all such parts and places within this County, as you shall be directed unto by Administra of all and singular the goods, rights, and credits, of late of deceased, wheresoever any of the goods and chattels of the said deceased are or do remain within the said parts and places, and which shall be shown unto you by the said and there view and appraise all and every of the said goods and chattels, being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory and appraisement thereof, and to cause the same to be returned under your hands, or any three or four of you, to the said on or before day of now next ensuing.

Dated the day of Anno Domini 18 and in the year of American Independence.

Judge of Probate's office. } To
RECORDED }
Book..... } or any three or four of them.
Page..... }

MEMORANDUM.

This day of 18 personally appeared before me, Esquire, one of the Justices assigned to keep the Peace in County, being of the Appraisers appointed to appraise the goods and chattels of deceased; who being duly sworn, made oath, that they would make a just and true appraisement of all and singular the goods and chattels of deceased, as shall be produced by of the Estate of the said deceased, and that they would return the same, certified under their hands, unto the said within the time prescribed by law.

289. *Letters of Administration.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Judge of Probate.

To

WHEREAS, late of deceased, lately died intestate, having, whilst he lived, and at the time of his death, divers goods, rights, and credits within the State aforesaid; by means whereof the full disposition and power of granting the administration of all and singular the goods, rights and credits of the said deceased, and also auditing the accounts, calculations and reckonings, of the said administration; and a final dismission of the same to me is manifestly known to belong. I, desiring that the goods, rights and credits of the said deceased, may be well and truly administered, converted and disposed of, do hereby grant unto the said
in whose fidelity in this behalf I very much confide, full power, by the tenor of

these Presents, to administer the goods, rights and credits of the said deceased, which to h , in h life time, and at the time of h death, did belong, and to ask, levy, recover and receive the same, and pay the debts in which the deceased stood obligated, so far as h goods, rights and credits will extend, according to their rate and order of law, being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory thereof, and to exhibit the same in the Judge of Probate's Office in in order to be recorded, on or before the day of now next ensuing, and to render a just and true account, calculation and reckoning of the said administration, when thereunto required. And I do ordain, depute and constitute you, the said Administrat of all and singular the goods, rights and credits of the said deceased.

Judge of Probate } IN TESTIMONY WHEREOF, I have hereunto set my hand
RECORDED } and seal, the day of in the year of
Book..... } our Lord one thousand eight hundred and and in
Page..... } the year of American Independence.

290. *Letters of Administration—Will annexed.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Esquire, Probate Judge.
To

WHEREAS, I by means whereof, the power of granting the administration of the Estate and effects of the said deceased, to me is manifestly known to belong. And whereas, hath made suit to me to grant Letters of Administration of the Estate and effects of the said deceased, with Will annexed.

I, THEREFORE, in consideration of the premises, and that the goods and chattels, rights and credits, of the said deceased, may be well and truly administered, converted, and disposed of according to law, do hereby give and grant unto the said (in whose fidelity in this behalf, I very much confide,) full power and authority, by the tenor of these presents, to administer and faithfully dispose of the goods and chattels, rights and credits of the said deceased, according to the effect and tenor of the said Will. And first to pay the debts of the said deceased, which did owe at the time of death; afterwards the Legacies contained in, and specified by the said Will, as far as such goods and chattels, rights and credits will thereto extend, and the law requires; being first sworn on the Holy Evangelists of Almighty God, to make a true and perfect inventory thereof: And to exhibit the same into the Probate Court, in order to be recorded on or before the day of next ensuing. And I do ordain, depute, and constitute you, the said Administrat of all and singular the goods and chattels, rights and credits, of the said deceased, with Will annexed.

Probate Court, } GIVEN under my hand and seal, the day of in
RECORDED, } the year of our Lord one thousand eight hundred and and
Book..... } in the year of American Independence.
Page..... }

291. *Dedimus to Qualify Administrators.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Judge of Probate. To

I resposing especial trust and confidence in your integrity and circumspection, have, and by these presents do give unto you, the said full power and authority to administer the usual administration oath unto administrat of all and singular the goods, rights, and credits of deceased, on the Holy Evangelists of Almighty God, before you to be taken: And also to cause to be executed by the said with two sufficient sureties, the usual bond given by an administrat which so executed, with your doings in the premises, to return with all convenient speed into the Judge of Probate's Office of this County.

GIVEN under my hand and seal this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

Judge of Probate's Office.

"I do solemnly swear, (or affirm,) that deceased, died without any will, as far as I know or believe; and that I will well and truly administer all and singular the goods and chattels, rights and credits of the said deceased, and pay all h just debts, as far as the same will extend and the law requires me; and that I will make a true and perfect inventory of all the said goods and chattels, rights and credits, and return a just account thereof when thereunto required. SO HELP ME GOD."

SWORN before me this day of 18 .

292. *Dedimus for Executor.*

THE STATE OF SOUTH CAROLINA, County.

By Esquire, Probate Judge. To

I, resposing especial trust and confidence in the integrity, care and circumspection of you, the said have given, and by these presents do give unto you, full power and authority, to examine the several witnesses to the last Will and Testament of deceased, upon their corporal oaths, to be taken on the Holy Evangelists of Almighty God, touching the due execution thereof, according to the form of the statute in that case made and provided, and also to administer the usual oath to named Execut to the last Will and Testament of deceased: And a due return fo your doings herein you are to make and give under your hand and seal, for my approbation or disallowance.

GIVEN under my hand seal, this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

I do solemnly swear, that this writing contains the true last Will of the within named deceased, so far as known or believe and that will well and truly execute the same, by paying, first the debts, and then the legacies contained in the said Will, as far as goods and chattels will thereunto extend, and the law charge and that will make a true and perfect inventory of all such goods and chattels. SO HELP ME GOD.

SWORN before me, this day of 18 .

THE STATE OF SOUTH CAROLINA.

I do hereby certify, that in virtue of the annexed Dedimus, I did duly examine the several witnesses, and qualified the therein named as Execut to the last Will and Testament of deceased, according to law.

GIVEN under my hand and seal, this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

293. *Letters of Guardianship.*

THE STATE OF SOUTH CAROLINA, }
County. }

By Judge of Probate. To

WHEREAS, late of deceased, a minor, entitled to a estate applied to me, to appoint to be Guardian. For the better securing the said estate for the benefit of the said minor, and for more careful maintenance and education, I do hereby commit the tuition, guardianship, and education, of the said to you, the said charging you to maintain in meat, drink, washing, lodging, clothing, and such good education as may be fitting according to the circumstances or interest of the said during minority, take charge of estate, do such things as a Guardian should, and render a true and faithful account of the said estate, and of your management thereof, when thereunto duly required.

GIVEN under my hand and seal, this day of in the year of our Lord one thousand eight hundred and and in the year of the Independence of the United States of America.

Judge of Probate's }
Office. }
RECORDED. }
Book..... }
Page..... }

294. *Letters Dismissory.*

THE STATE OF SOUTH CAROLINA, }
County. } In Probate Court.

By the Honorable Judge of Probate for the County of in the State aforesaid.

TO ALL TO WHOM THESE PRESENTS SHALL COME—GREETING:

WHEREAS, at the Term 18 of the Court of Probate for County on the day of in the year of our Lord one thousand eight hundred and the petition of on the estate of of deceased, late of this State, was presented, setting forth that the duties of said fully discharged, and praying to be released from the same.

AND WHEREAS, the said have complied with the Act of the General Assembly, enacted on 25th March 1869, and published in conformity to law for at least one month a Citation calling upon all persons concerned to shew cause on or before the day of why said application should not be granted; And whereas, said Citation has been published in a public Gazette of

this State, for the space of one month, and no cause being shewn against said application, and it appearing from an examination of the situation of the affairs of the said estate that the petitioner has faithfully and honestly discharged the trust and confidence reposed in him. Now Know all Men by these Presents, That is from henceforth and forever discharged and dismissed from all liability as as aforesaid.

WITNESS Honorable, Judge of Probate for County the day of in the year of our Lord one thousand eight hundred and

R. K. C. [L. S.]

295. *Certificate of Administrator or Administratrix.*

THE STATE OF SOUTH CAROLINA, County. } In the Court of Probate.

I DO HEREBY CERTIFY, that is the legally qualified Administrator of the last Will and Testament of late of deceased.

GIVEN under my hand and the Seal of this Court, this day of A. D. 18

296. *Certificate of Executorship.*

THE STATE OF SOUTH CAROLINA, County. } In the Court of Probate.

I DO HEREBY CERTIFY, that s the legally qualified Executor of the last Will and Testament of late of deceased.

GIVEN under my hand and the Seal of this Court, day of A. D. 18

294 *Probate of a Will.*

THE STATE OF SOUTH CAROLINA, County. }

By Judge of Probate.

PERSONALLY appeared before me of the subscribing witnesses to the foregoing Instrument of Writing, who made oath on the Holy Evangelists of Almighty God that he saw sign, seal, publish, pronounce, and declare the same to be last Will and Testament : that was then of sound and disposing mind, memory, and understanding, to the best of deponent's knowledge and belief ; and deponent, together with signed their names thereto as Witnesses at request, in presence and in the presence of each other : at the same time qualified , therein named.

GIVEN under my Hand this day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

298. *Certificate of Annual Account.*

THE STATE OF SOUTH CAROLINA, }
County. }

18

I DO HEREBY CERTIFY, that I have this day examined the foregoing account, that upon oath declared that had received no other moneys on account of the Estate of deceased, than as therein credited; all the charges against the said Estate were proved by vouchers.

299. *Administration Bond.*

THE STATE OF SOUTH CAROLINA. }
County. }

KNOW ALL MEN BY THESE PRESENTS, That we, are holden and firmly bound unto Judge of Probate for the County of in the full and just sum of Dollars, to be paid to the said or his successors, Judges of Probate of this County, or their certain attorney or assigns. To which payment, well and truly to be made, we bind ourselves, and every of us, you, and every of our heirs, executors, and administrators, for the whole, and in the whole, jointly and severally, firmly by these presents.

SEALED with our seals, and dated the day of in the year of our Lord one thousand eight hundred and and in the year of American Independence.

The condition of the above Obligation is such, that if the above bound—* Administrat of the goods, chattels, and credits of deceased, do make a true and perfect inventory of all and singular the goods, chattels, and credits of the deceased, which have or shall come to the hands, possession or knowledge of the said or into the hands or possession of any other person or persons, for and the same so made, do exhibit into the said Probate Court for County, when shall be thereunto required and such goods, chattels, and credits do well and truly administer, according to law, and make a just and true account of actings and doings therein, when required by the said Court; and all the rest of the said goods, chattels, and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the same Court, shall deliver and pay unto such persons, respectively, as are entitled to the same by law; and if it shall hereafter appear that any last Will and Testament was made by the said deceased, and the same be proved in Court and the Executors obtain a Certificate of the Probate thereof, and the said do in such case, if required, render and deliver up said Letters of Administration, then this obligation to be void, or else to remain in full force.

Signed, sealed and delivered } [L. S.]
in the presence of } [L. S.]
[L. S.]

Administrat sworn. }
Value not exceeding }
Suret justified. }

309. *Administration bond with Will annexed.*

THE STATE OF SOUTH CAROLINA, }
County. }

[*As in the preceding form to*—*]

—*Guardian of the Person and Estate of do and shall carefully and handsomely bring up the said during minority and non age, with necessary meat, drink, washing, lodging, apparel and learning, according to degree, and shall during the time the said shall be guardian and tutor unto the said defend from hurt of body, loss of goods and lands, so far as in power lieth, and such portions as shall fall due unto the said of the goods and chattels of any person whatsoever, according to the inventory, or by any other way whatsoever, shall deliver and pay unto the said when come of age to receive the same by law. And if it happens that the said shall die before the time, then if the said do contract and pay the portions and other rights of the said to whom the law shall appoint the same to be paid, or who by proximity of blood ought to have it: And shall also render a true and perfect account upon the tuition to granted, when thereunto required; and also save and keep harmless the above named Judge of Probate, and all other Officers and Ministers under him, for or by reason of granting the said Letters of Guardianship, that then the above Obligation to be void and of none effect, or else to remain in full force and virtue

Signed, sealed and delivered } [L. S.]
in the presence of } [L. S.]
[L. S.]

301. *Guardian Bond.*

THE STATE OF SOUTH CAROLINA. }
County. }

[*As in* 299 *to*—*]

—*Administra with the Will annexed of the goods, chattels and credits of do make and cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands or possession or knowledge of the said or into the hands or possession of any other person for h , and the same so made do exhibit into the said Court of Probate for County, at such time as shall be thereunto required by the said Court, and the same goods, chattels and credits be well and truly administer according to law, and make a just and true account of actings and doings when by law required: and further, do well and truly pay and deliver all the legacies contained and specified in the said Will as far the said goods, chattels and credits will extend and the law requires, then this obligation to be void, or else to remain in full force ann virtue.

Signed, sealed and delivered }
in the presence of } [L. S.]
[L. S.]
[L. S.]

Administra sworn.
Value Estate not exceeding
$ Sureties justified.

302. *Order for Sale of Personal Property—Administrators.*

THE STATE OF SOUTH CAROLINA. }
County, } In the Court of Probate.

By Esq., Judge of Probate.

On due consideration of the petition of qualified administrat of the Estate of deceased; It is hereby ordered that he have leave to sell and file the account Sales thereof for record in this Court.

Given under my Hand and Seal of Office, at this day of A. D. 18

R. K. C. [Seal.]

303. *Tax Return—Real Estate.*

John Smith returns (in tabular form) three lots on 10th street in the town of , bought during the past year of Thomas Rhett. Lot 16 is valued at $500. Lot 18 at $2,000, (having a dwelling house worth $1,500 upon it,) and lot 20 at $300. Total valuation of lots and lands in towns and villages, $2,800. He also returns on other lands not in towns or villages, under the following heads; Arable or plow lands, meadow and pasture land, and wood and marsh lands: and buildings; which is summed up in a column of total number of acres, and another—of total valuation. The time when this return is to be filed in the Auditor's office is prescribed by law.

304. *Tax Return— Personal Property.*

To

You are notified to make out and return to me, a statement in the following form of all personal property, money, credits over and above your indebtedness, investment in bonds, stocks, joint stock companies or otherwise in your possession, or under your control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting officer, agent, attorney or factor on the first day of July 18

Dated 18 County Auditor.

Personal Property, moneys, credits &c., subject to Taxation in County, for the year 18 , belonging to and listed by

Here follow—Horses, Cattle, Sheep, Hogs, Gold and silver watches, Plate &c. Moneys, value of credits &c. Pianos, and value of all other personal property, in tabular form, with a valuation attached to each article and a total carried out.

THE STATE OF SOUTH CAROLINA, }
County. }

I do solemnly that to the best of my knowledge and belief, I have listed or exhibited to the Auditor all the personal property, moneys, credits, over and above my indebtedness, investments in bonds, stocks, joint stock companies or otherwise, in my possession or under my control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting officer, agent, attorney or factor, on the first day of July, 187 which are subject to taxation under the laws of this State.

Sworn to and subscribed before me, this day }
of 187 }
County Auditor. }

305. *Auditors' Warranty Deed.*

THE STATE OF SOUTH CAROLINA. }
County of }

THIS INDENTURE, Made this day of , in the year one thousand eight hundred and seventy , between , County Auditor of the County of , in the State of South Carolina, of the first part, and of in the County of and State of South Carolina, of the second part; Whereas the County Auditor of each and every County in the State of South Carolina is authorized and required, by an Act of the General Assembly of the State, entitled, "An Act to amend an Act entitled, 'An Act Providing for the Assessment and Taxation of Property,' passed September 15, 1868, and all Acts amendatory thereto," approved March 12, 1872, to execute a "Warranty Deed" to the purchaser or purchasers of all Property forfeited to the State, under the provisions of the said Act providing for the Assessment and taxation of Property, and said other Acts amendatory thereto, and sold by the County Treasurer under the provisions of said Acts:

Now, therefore, This Indenture witnesseth that I, , County Auditor of the County of in the State aforesaid, of the first part, in consideration of the sum of dollars, good and lawful money of the United States, to me in hand paid by the said , of the second part, for, and in behalf of the State of South Carolina, have granted, bargained, sold and released, and by there presents do grant, bargain, sell and release, unto the said all that certain lot, tract or parcel of land, bounded and described as follows, to wit:

Together with all and singular the rights, members, hereditaments and appurtenances, to the said premises belonging, or in any wise incident or appurtenant. To have and to hold, all and singular the premises before mentioned, unto the said , h heirs and assigns forever. And I, , County Auditor as aforesaid, do hereby bind the State of South Carolina, to warrant and forever defend all and singular the said premises unto the said , h heirs and assigns, against the said State of South Carolina, and against every person and all persons whomsoever, lawfully claiming or to claim the same, or any part thereof.

{ Great Seal } WITNESS my hand and the Great Seal of the State, this day of in the year of our Lord one thousand eight hundred and seventy and in the year of the Independence of the United States of America.

Signed, sealed and delivered }
in the presence of }

STATE OF SOUTH CAROLINA, }
County }

Personally appeared before me and made oath that he saw the within named , County Auditor of the County of in the State aforesaid, as before mentioned, sign, seal, and as his act and deed, for and in behalf of the State, deliver the within Deed and that he with , witnessed the execution thereof.

Sworn before me, this day of 187

306. *Tax Receipt, No.*

County, S. C. 187

Received from in full for taxes, due on the following described property for the year 187 viz:

On Real Estate, consisting of $

On Personal Property, amounting to $

For State Tax, $

County Tax,

For Highway Tax;

For District School Tax,

For Poll Tax,

TOTAL, $

County Treasurer.

307. *Tax Execution.*

STATE OF SOUTH CAROLINA, }
County. }

By Treasurer.

To WHEREAS, has been duly assessed for the year 187 , in the sum of dollars and cents, for defraying the charges of the State, and County of which he has neglected to pay: These are therefore in the name of the State, and of the said County of , strictly to charge and command you to Levy by distress and sale of the goods and chattels of the said the sum of dollars, and cents, together with the costs and charges thereof.

Given under my Hand and Seal, at the day of A. D. 187 .

[L. S.]

Treasurer County.

State of South Carolina, }
vs. } *Statement.*
X. Y. Z. }

State Tax,..... $

Penalty on State Tax. .....

County Tax, ...

Penalty on County Tax, ...

District School Tax, ...

Penalty on School Tax, ...

Poll Tax, ...

Execution, ...

Treasurers' Costs, ...

Mileage, ...

Total, $

308. *License to sell spirituous Liquors.*

OFFICE OF COUNTY COMMISSIONERS, }
County, S. C. }

To whom it may concern:

THIS IS TO CERTIFY, that has paid into the County Treasury the sum of dollars, for a License to sell Spirituous Liquors at place of business in S. C., said License to continue in force from to 18

By order of the Board of Commissioners,

Chairman.

Attest:

This License is not transferable. Clerk.

309. *Tavern Keeper's Bond.*

STATE OF SOUTH CAROLINA, }
County of . }

Know all men by these presents, that WE, of the County of , S. C., acknowledge ourselves to owe the State of South Carolina the sum of dollars, to which payment, well and truly to be made, we bind ourselves, and every one of us, each and every one of our heirs, executors and administrators, jointly and severally, by these presents.

Witness our hands and seals, this day of , in the year of our Lord one thousand eight hundred and

The condition of this recognizance is such, that whereas the above bound is licensed to keep a tavern, occupied by located at , for the space of months, from Now, if the said during the continuance of the said license shall not keep a disorderly house, nor suffer or permit any unlawful gaming in or about said house, nor violate the laws concerning the traffic in spirituous Liquors, but shall, during said term, in all things use and maintain good order and rule, and provide good, wholesome and sufficient lodging, diet and entertainment for men, and stabling and provender for horses, and observe the directions of the law relating to the keeping of Taverns, then this recognizance to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of:

[L. S.]
[L. S.]

310. *School Teacher's Pay Certificate.*

To G. H., Esq. County Treasurer of County, S. C.

Sir! Please pay to or order dollars, said sum being the amount of salary due to as Teacher in the School, located in School District No. known by the local name of situated in County, for the months from 18 commencing 18 and ending 18 said Teacher having properly made out and filed all monthly reports required by law.

C. F. R., Clerk. } Board of School Trustees, School District, No. County, Dated at S. C., 18

ADDENDA.

Consisting of changes in the time of holding Courts in various Counties; in the date of the spring term of the Supreme Court: amendments in Acts relating to Trial Justices, and new provisions in regard to the administration of Derelict Estates &c.

AN ACT TO FIX THE TIME FOR THE HOLDING OF THE CIRCUIT COURTS IN CERTAIN COUTIES THEREIN MENTIONED. RATIFIED FEBRUARY 4th, 1873.

SECTION 1. Circuit Courts in the sixth Circuit shall be held as follows:

1. The Court of General Sessions, at Chester, for the County of Chester, on the first Monday of January, and the third Monday of March and September; and the Court of Common Pleas, at Chester, for the County of Chester, on the first Wednesday after the first Monday of January, and on the first Wednesday after the third Monday in March and September.

2. The Court of General Sessions, at Yorkville, for the County of York, on the second Monday of January, and on the first Monday of April and October; and the Court of Common Pleas, at Yorkville, for the County of York, on the first Wednesday after the second Monday of January, and on the first Wednesday after the first Monday of April and October.

3. The Court of General Sessions, at Lancaster, for the County of Lancaster, on the third Monday of January, April and October; and the Court of Common Pleas, at Lancaster, for the County of Lancaster, on the first Wednesday after the third Monday of January, April and October.

4. The Court of General Sessions, at Winnsboro, for the County of Fairfield, on the fourth Monday of January, and on the first Monday of May and November; and the Court of Common Pleas, at Winnsboro, for the County of Fairfield, on first Wednesday after the fourth Monday of January, and on the first Wednesday after the first Monday of May and November.

SECTION 2. In the second Circuit the Court of General Sessions, at Aiken, for the County of Aiken, on the first Monday of January, May and September, and the Court of Common Pleas, at Aiken, for the County of Aiken, on the first Wednesday after the first Monday of January, May and September.

SECTION 3. In the third Circuit, the Court of General Sessions shall be held at Kingstree, for the County of Williamsburg, on the first Monday after the fourth Monday of January, May and October; and the Court of Common Pleas shall be held at Kingstree, for the County of Williamsburg, on the first Wednesday after the first Monday after the fourth Monday of January, May and October.

2. The Court of General Sessions, at Conwayboro, for the County of Horry, on the first Monday after the fourth Monday of February, June and October; and the Court of Common Pleas, at Conwayboro, for the County of Horry, on the first Wednesday after the fourth Monday of February, June and October.

SECTION 4. The Circuit Courts in the seventh Circuit shall be held as follows.

1 The Court of General Sessions, at Newberry, for the County of Newberry, on the third Monday of January, May and November; and the Court of Common Pleas, at Newberry, for the County of Newberry, on the first Wednesday after the third Monday of January, May and November.

2. The Court of General Sessions, at Laurensville, for the County of Laurens on the third Monday of February and June, and the first Monday after the fourth Monday in November: and the Court of Common Pleas, at Laurensville, for the County of Laurens, on the first Wednesday after the third Monday of February and June, and on the first Wednesday after the first Monday after the fourth Monday in November.

3. The Court of General Sessions, at Unionville, for the County of Union, on the third Monday of March, June and September; and the Court of General Sessions, at Unionville, for the County of Union, on the first Wednesday after the third Monday of March, June and September.

4. The Court of General Sessions, at Spartanburg, for the County of Spartanburg, on the first Monday after the fourth Monday in March and July, and on the third Monday in October; and the Court of Common Pleas, at Spartanburg, for the County of Spartanburg, on the first Wednesday after the first Monday after the fourth Monday in March and July, and on the first Wednesday after the third Monday in October.

Hereafter the April term of the Supreme Court shall commence on the third Tuesday of April in each year.

AN ACT TO PROVIDE FOR THE ADMINISTRATION OF DERELICT ESTATES.

SEC. 1. Whenever it shall come the knowledge of any clerk of the Court of Common Pleas of any County in this State that the estate and effects of any deceased person, as to which administration could legally be granted by the Judge of Probate of his County, remain for the period of six months entirely or partially unadministered either by reason of no application for letters of administration, or from any other cause, so that there is no legally appointed representative of such deceased person, it shall be the duty of such Clerk of the Court to make application to the Judge of Probate of the County for letters of administration on the estate of such deceased person, accompanied with a statement of the nature, condition and value of the said estate, so far as it may be known to him: and, thereupon, it shall be the duty of such Judge of Probate to insert a notice of such application, in usual form, for forty days, in some public newspaper published in such county; or, if there be none such, in some adjoining County, and also at the door of the Court house: and, after such notice, to grant to such clerk of the Court letters of administration on the estate of such deceased person, with the will annexed, in case there be a will; and such clerk shall give bond, with two sureties, for the faithful discharge of his duty as such administrator, in such amount as would be required of any other administrator.

SEC. 2. Upon the grant of such letters of administration, such clerk shall be entitled to all the rights, powers and authorities, and shall be subject to the same duties and obligations and responsibilities in relation to said estate and the administration thereof, as are now provided by law in case of administrators, and shall be entitled to five per centum of all moneys collected by him; and, in addition to filing an inventory, appraisement and account in the office of the Judge of Probate, shall also keep an official record of the same, and all his proceedings thereon, in his own office, which shall be submitted at each term of the Court to the Circuit Judge; and the said clerk shall have the right to possession of any of the goods and chattels of such deceased person, and may, by authority of the Judge of Probate, sell and dispose of the same, and any sale so made, in pursuance of such order, shall be good and valid to all intents, as if regularly made by any other administrator.

Sec. 3. Whenever, after the grant of such letter of administration to such clerk, any other person who would be entitled to letters of administration on such estate as specially designated by law, shall apply to the Judge of Probate of the County granting the same, and be ready to give the required security, the letters of administration previously granted to such Clerk shall be revoked, and the same be granted to such person so applying for the same; but such revocation shall in no wise be held to annul or impair any act legally done, or right acquired previously, under or by virtue of such administration.

Approved February 26, A. D. 1872.

AN ACT TO REGULATE THE APPOINTMENT AND SALARY OF TRIAL JUSTICES IN THE CITY OF CHARLESTON. RATIFIED FEBRUARY 21, 1873.

Section 1. That the Governor do appoint, by and with the advice and consent of the Senate, five trial justices for the city of Charleston, and no more, to hold their offices for the term of two years, unless sooner removed, according to law: *Provided*, That during the recess of the Senate the Governor may appoint either one or all of said Trial Justices, to hold their offices, unless removed by him, till the end of the next session of the Legislature, when the appointment shall cease, unless confirmed by the Senate. If a vacancy occurs during the session of the Legislature, it shall be filled only by the advice and consent of the Senate.

Sec. 2. The Trial Justices appointed for the city of Charleston shall reside in said city and keep their offices there, which shall be opened from day to day for the transaction of business: *Provided*, That the Trial Justices appointed shall be commissioned by the Governor, in the following manner, to wit: Two for wards one and two; one for wards three and four; one for wards five and six; one for wards seven and eight; and shall have their offices located in a central location, convenient to the people of the wards for which they are appointed.

Sec. 3. Instead of the fees and fines heretofore allowed by law for the Trial Justices in the city of Charleston, they shall each be allowed a salary of twelve hundred dollars per annum, payable quarterly, on the first day of January, April, July and October, by the County Treasurer for Charleston County, out of the County fund, and that all fees taxed and recovered in criminal cases in the Courts of said Trial Justices shall be forthwith turned over to the County Treasurer for the County of Charleston: and the said Trial Justices shall return to the Judge of the first Circuit a monthly report of all fees, fines and costs recovered or collected by them during the said month.

Sec. 4. All the appointments of Trial Justices, resident within the city of Charleston, hitherto made, shall cease and determine on and after the first day of April next, and the Trial Justices provided for in this Act shall enter upon their duties upon that day.

Sec. 5. The Trial Justices appointed for the city of Charleston may each appoint two constables, and no more, to serve the processes of their respective Courts, removable at pleasure; the constables so appointed shall receive a salary of five hundred dollars per annum, to be paid at the time provided for in Sec. 3 of this Act.

Sec. 6. If either of the Trial Justices appointed for the city of Charleston shall neglect to attend to the duties of their offices, or shall be guilty of extortion or oppression in office, or shall fail to pay over, as required by this Act, the fees and fines collected by him in his office, he shall be liable to indictment therefor,

and, on conviction, shall be liable to imprisonment for two years and a fine of one thousand dollars, or both, within the discretion of the Court, and shall be removed from office.

Sec. 7. The Trial Justices so appointed shall give a bond of twenty-five hundred dollars for the faithful performance of their duties, the bond to be approved by the Judge of the first circuit.

AN ACT to require County Coroners to report to the Governor in Capital cases.

Sec. 1. It shall be the duty of a County Coroner, whenever a homicide has been committed in his County, and the party committing such homicide has not been arrested, or having been arrested has escaped custody before bill found, to forward a report to the Governor within three days after the holding of an inquest by him, or in cases of escape, within three days after notice of such escape, which report shall embrace the name of the person killed, and the name of the person, if known, charged with committing such homicide, together with a copy of the evidence taken before the jury of inquest, and the verdict rendered thereupon: Provided, that, in case of escape, it shall be the duty of the Sheriff, or other officer having custody of the party, to notify such Coroner of the escape promptly.

Sec. 2. Upon the receipt of any report as provided in Section 1 of this Act, the Governor may, in his discretion, offer such reward as the gravity of the crime warrants, not exceeding five hundred dollars in any case, for the apprehension and delivery of the fleeing or escaped criminal, as the case may be, to the Sheriff of the County in which such alleged crime was committed, which reward shall be paid upon the warrant of the Governor from his contingent fund.

Sec. 3. Any Coroner who shall willfully neglect to make the report as provided in Section 1 of this Act, shall be liable to indictment as for a misdemeanor, and upon conviction, shall be fined not less than fifty nor more than five hundred dollars, or imprisoned not less than thirty days, nor more than six months, or both, at the discretion of the Court.

Sec. 4. All Acts and parts of Acts inconsistant with this Act be, and the same are hereby repealed.

Approved February 27, A. D. 1873.

AN ACT to fix the time for certain State and County officers to report.

Section 1. On and after the passage of this Act, the Comptroller General and all other State officers who are now required by law to report annually to the General Assembly, be, and they are hereby, required to make such report on or before the first day of December, of each and every successive year.

Sec. 2. That all County officers who are now required by law to make reports to superior County or State officers, be, and they are hereby required to make such report on or before the first day of November, in each and every successive year.

Sec. 3. Any of the officers above enumerated who shall fail to comply with the provisions of this Act, shall be deemed guilty of a misfeasance in office, and, upon conviction, shall be punished by a fine of not less than five hundred, nor more than three thousand dollars, or be imprisoned for a term of not less than three months, nor more than two years, or either or both, at the discretion of the Court.

SEC. 4. The Attorney General is hereby especially charged with the prompt and rigorous enforcement of the provisions of this Act.

SEC. 5. All Acts and parts of Acts inconsistent with this Act, are hereby repealed.

Approved February 27, A. D. 1873.

AN ACT to require State and County officers elected by the people to qualify within thirty days after receiving official notification thereof.

SECTION 1. From the passage of this Act it shall be the duty of each and every State and County officer elected by the people to qualify within thirty days after receiving official notification thereof; and upon the filing of his bond and qualifying according to law, he shall enter upon the duties of said office.

SEC. 2. If any officer elected by the people shall fail to qualify and enter upon the duties of his office as required by the provisions of this Act, he shall forfeit the office to which he shall have been elected, and the Governor is hereby authorized to order an election to be holden within ninety days to fill the vacancy.

SEC. 3. All Acts or parts of Acts inconsistent with the provisions of this Act, are hereby repealed.

Approved January 29, A. D. 1873.

AN ACT requiring a bond from County Commissioners before entering upon the duties of their office.

SECTION 1. The County Commissioners shall, before entering upon the duties of their office, be, and they are hereby, required to give a bond for the use of their respective Counties, in the penal sum of two thousand dollars each, with three good and sufficient sureties, to be approved by the Clerk of Court of their respective Counties, conditioned upon the faithful and impartial performance of the duties of their office: Provided, That the County Commissioners of Charleston shall furnish a bond, as hereinbefore provided, in the penal sum of ten thousand dollars each, and the County Commissioners of the Counties of Beaufort, Barnwell and Richland, shall furnish a bond of five thousand dollars each, as hereinbefore provided: Provided further, That this Act shall not be in force until on and after the next general election of County Commissioners.

SEC. 2. All Acts and parts of Acts inconsistent with this Act are hereby repealed.

Approved January 29, A. D. 1873.

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